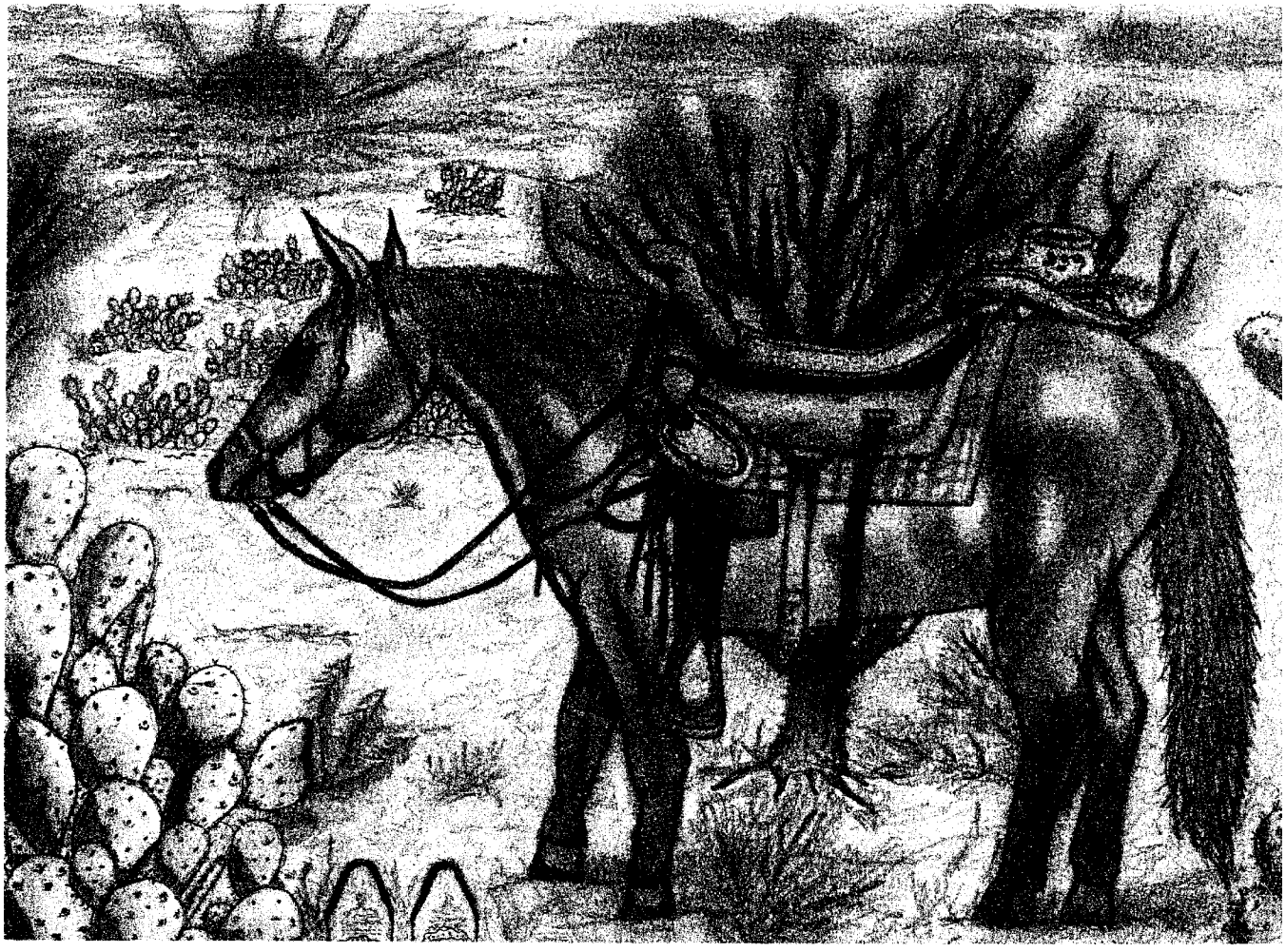
TEXAS REGISTER

Volume 34 Number 1 *January 2, 2009* *Pages 1 - 124*



School children's artwork is used to decorate the front cover and blank filler pages of the *Texas Register*. Teachers throughout the state submit the drawings for students in grades K-12. The drawings dress up the otherwise gray pages of the *Texas Register* and introduce students to this obscure but important facet of state government.

The artwork featured on the front cover is chosen at random. Inside each issue, the artwork is published on what would otherwise be blank pages in the *Texas Register*. These blank pages are caused by the production process used to print the *Texas Register*.

Texas Register, **(ISSN 0362-4781, USPS 120-090),** is published weekly (52 times per year) for $211.00 ($311.00 for first class mail delivery) by LexisNexis Matthew Bender & Co., Inc., 1275 Broadway, Albany, N.Y. 12204-2694.

The ***Texas Register*** is published under the Government Code, Title 10, Chapter 2002. Periodicals Postage Paid at Albany, N.Y. and at additional mailing offices.

POSTMASTER: Send address changes to the ***Texas Register,*** 136 Carlin Rd., Conklin, N.Y. 13748-1531.

a section of the
Office of the Secretary of State
P.O. Box 13824
Austin, TX 78711-3824
(512) 463-5561
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http://www.sos.state.tx.us
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IN THIS ISSUE

Open Meetings

Statewide agencies and regional agencies that extend into four or more counties post meeting notices with the Secretary of State.

Meeting agendas are available on the *Texas Register*'s Internet site:
http://www.sos.state.tx.us/open/index.shtml

Members of the public also may view these notices during regular office hours from a computer terminal in the lobby of the James Earl Rudder Building, 1019 Brazos (corner of 11th Street and Brazos) Austin, Texas. To request a copy by telephone, please call 512-463-5561. Or request a copy by email: register@sos.state.tx.us

For items ***not*** available here, contact the agency directly. Items not found here:

- minutes of meetings
- agendas for local government bodies and regional agencies that extend into fewer than four counties
- legislative meetings not subject to the open meetings law

The Office of the Attorney General offers information about the open meetings law, including Frequently Asked Questions, the *Open Meetings Act Handbook*, and Open Meetings Opinions.
http://www.oag.state.tx.us/opinopen/opengovt.shtml

The Attorney General's Open Government Hotline is 512-478-OPEN (478-6736) or toll-free at (877) OPEN TEX (673-6839).

Additional information about state government may be found here:
http://www.state.tx.us/

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Meeting Accessibility. Under the Americans with Disabilities Act, an individual with a disability must have equal opportunity for effective communication and participation in public meetings. Upon request, agencies must provide auxiliary aids and services, such as interpreters for the deaf and hearing impaired, readers, large print or Braille documents. In determining type of auxiliary aid or service, agencies must give primary consideration to the individual's request. Those requesting auxiliary aids or services should notify the contact person listed on the meeting notice several days before the meeting by mail, telephone, or RELAY Texas. TTY: 7-1-1.

THE ATTORNEY GENERAL

The *Texas Register* publishes summaries of the following: Requests for Opinions, Opinions, Open Records Decisions.

An index to the full text of these documents is available from the Attorney General's Internet site http://www.oag.state.tx.us. Telephone: 512-936-1730. For information about pending requests for opinions, telephone 512-463-2110.

An Attorney General Opinion is a written interpretation of existing law. The Attorney General writes opinions as part of his responsibility to act as legal counsel for the State of Texas. Opinions are written only at the request of certain state officials. The Texas Government Code indicates to whom the Attorney General may provide a legal opinion. He may not write legal opinions for private individuals or for any officials other than those specified by statute. (Listing of authorized requestors: http://www.oag.state.tx.us/opinopen/opinhome.shtml.)

Request for Opinions

RQ-0770-GA

Requestor:

Mr. Robert Scott

Commissioner of Education

Texas Education Agency

1701 North Congress Avenue

Austin, Texas 78701-1494

Re: Authority of the board of trustees of an independent school district to change the length of its members' terms after December 31, 2007 (RQ-0770-GA)

Briefs requested by January 19, 2009

RQ-0771-GA

Requestor:

The Honorable Aaron Pena

Chair, Committee on Criminal Jurisprudence

Texas House of Representatives

P.O. Box 2910

Austin, Texas 78768-2910

Re: Authority of the Texas Lottery Commission to adopt a rule defining the terms "gambling promoter" and "professional gambler" (RQ-0771-GA)

Briefs requested by January 19, 2009

For further information, please access the website at www.oag.state.tx.us or call the Opinion Committee at (512) 463-2110.

TRD-200806619

Stacey Napier

Deputy Attorney General

Office of the Attorney General

Filed: December 19, 2008

♦ ♦ ♦

Opinion

Opinion No. GA-0687

Mr. Amadeo Saenz, Jr., P.E.

Executive Director

Texas Department of Transportation

125 East Eleventh Street

Austin, Texas 78701-2483

Re: Whether monies held in trust in a certain subaccount of the state highway fund may be transferred to a regional transportation authority (RQ-0721-GA)

S U M M A R Y

Section 228.012 of the Transportation Code does not provide authority for the Texas Department of Transportation to transfer monies held in trust in a particular subaccount of the state highway fund to a regional transportation authority.

For further information, please access the website at www.oag.state.tx.us or call the Opinion Committee at (512) 463-2110.

TRD-200806618

Stacey Napier

Deputy Attorney General

Office of the Attorney General

Filed: December 19, 2008

♦ ♦ ♦

PROPOSED RULES

Proposed rules include new rules, amendments to existing rules, and repeals of existing rules. A state agency shall give at least 30 days' notice of its intention to adopt a rule before it adopts the rule. A state agency shall give all interested persons a reasonable opportunity to submit data, views, or arguments, orally or in writing (Government Code, Chapter 2001).

Symbols in proposed rule text. Proposed new language is indicated by underlined text. [~~Square brackets and strikethrough~~] indicate existing rule text that is proposed for deletion. "(No change)" indicates that existing rule text at this level will not be amended.

TITLE 1. ADMINISTRATION

PART 15. TEXAS HEALTH AND HUMAN SERVICES COMMISSION

CHAPTER 354. MEDICAID HEALTH SERVICES

SUBCHAPTER A. PURCHASED HEALTH SERVICES

DIVISION 33. TELEMEDICINE SERVICES

The Texas Health and Human Services Commission (HHSC) proposes the repeal of 1 TAC §354.1430, concerning Definitions; §354.1432, concerning Benefits and Limitations; and §354.1434, concerning Requirements for Telemedicine Providers, and to replace the repealed rules with proposed new 1 TAC §354.1430, concerning Definitions, and §354.1432, concerning Benefits and Limitations, under Chapter 354, Subchapter A, Division 33, relating to Telemedicine Services.

Background and Justification

The Texas Medicaid program allows certain services to be provided via telemedicine. During a telemedicine visit, a distant site provider provides services to a patient who is located at another site (the patient site). A presenter at the patient site introduces the patient to the distant site provider for examination, and may assist in the telemedicine visit.

Senate Bill (SB) 24 and SB 760, 80th Legislature, Regular Session, 2007, required HHSC to make policy changes to the Medicaid telemedicine program. SB 24 instructs HHSC to add office visits as an additional telemedicine service for which distant site providers may receive reimbursement. This bill also directs HHSC to either: 1) allocate reimbursement between the distant site provider and the patient site provider; or 2) establish a facility fee that the distant site provider is required to pay the patient site provider. SB 760 changes the Medicaid telemedicine terminology and directs HHSC to encourage all health-care providers and health-care facilities to provide services via telemedicine.

In order to implement SB 24 and SB 760, and further align Texas Medicaid telemedicine policies with Medicare thereby reducing provider confusion, HHSC proposes to repeal §§354.1430, 354.1432, and 354.1434 related to Medicaid telemedicine, and replace them with new §354.1430 and §354.1432.

The new rules remove the limitations on the location of the distant site, expanding the options for distant site locations and the distant site provider base. The rules also clarify the existing rule that only physicians can be distant site providers. In addition, the new rules expand the allowable telemedicine codes from the 10 currently allowed consultation codes to the following additional services: office visits, pharmacologic management, psychiatric diagnostic interview examinations, and individual psychotherapy. These additions both comply with SB 24 and build on the state's Medicaid mental health telemedicine pilot. Also in line with the legislation and Medicare, the rules modify current Medicaid policy to allow any licensed or certified health professional to serve as the patient site presenter. Finally, the rules specify that HHSC will directly reimburse the patient site presenter a facility fee rather than a professional fee.

Section-by-Section Summary

Proposed new §354.1430 replaces repealed §354.1430. The proposed rule adds definitions related to Medicaid services provided via telemedicine and updates repealed definitions also included in the new rule by: 1) removing the limitations on the location of the distant site; 2) expanding the types of health professionals who can act as patient site presenters; 3) clarifying the role and qualifications of the patient site presenter; and 4) aligning the definition of an underserved area with the new federal definition. To reduce confusion, the new rule does not include definitions for teleradiology and telepathology. Medicaid reimburses for the interpretation of diagnostics (radiology/laboratory) regardless of how an image is transmitted or stored. The Texas Medicaid program does not reimburse separately for transmission and storage.

Proposed new §354.1432 replaces repealed §354.1432. The proposed rule adds the benefits and limitations for Medicaid services provided via telemedicine including: 1) adding services that are eligible for Medicaid reimbursement when provided via telemedicine; and 2) clarifying patient site presenter responsibilities.

Section 355.1434, which outlines the requirements for telemedicine providers, is repealed, as provisions of this rule have been incorporated into the two proposed new rules.

Fiscal Note

Thomas M. Suehs, Deputy Executive Commissioner for Financial Services, has determined that during the first five-year period the proposed repeal and new rules are in effect there will be a fiscal impact to state government of $105,772 (SFY2009); $118,203 (SFY2010); $130,940 (SFY2011); $143,249 (SFY2012) and $156,714 (SFY2013) as a result of allowing a wider array of providers, presenters, locations, and services at the patient and distant sites and the addition of a facility fee payable to the patient site. The proposal will not result in any fiscal implications for local health and human services agencies. Local governments will not incur additional costs.

Small and Micro-business Impact Analysis

Mr. Suehs has also determined that there will be no effect on small businesses or micro-businesses to comply with the proposed repeal and new rules, as they will not be required to alter their business practices as a result of the proposal. There are no anticipated economic costs to persons who are required to comply with the proposal. There is no anticipated negative impact on local employment.

Public Benefit

Chris Traylor, Associate Commissioner for Medicaid and CHIP, has determined that for each year of the first five years the proposed repeal and new rules are in effect, the public will benefit from the adoption of the proposal. The anticipated public benefit of the proposed repeal and new rules will be improved access to and quality of health care services.

Regulatory Analysis

HHSC has determined that this proposal is not a "major environmental rule" as defined by §2001.0225 of the Texas Government Code. "Major environmental rule" is defined to mean a rule the specific intent of which is to protect the environment or reduce risk to human health from environmental exposure and that may adversely affect, in a material way, the economy, a sector of the economy, productivity, competition, jobs, the environment or the public health and safety of a state or a sector of the state. This proposal is not specifically intended to protect the environment or reduce risks to human health from environmental exposure.

Takings Impact Assessment

HHSC has determined that this proposal does not restrict or limit an owner's right to his or her property that would otherwise exist in the absence of government action and, therefore, does not constitute a taking under §2007.043 of the Texas Government Code. Under §2007.003(b) of the Texas Government Code, HHSC has determined that Chapter 2007 of the Texas Government Code does not apply to these rules. The changes these rules make do not implicate a recognized interest in private real property. Accordingly, HHSC is not required to complete a takings impact assessment regarding these rules.

Public Comment

Written comments on the proposed repeal and new rules may be submitted to Tania Colon, Senior Policy Analyst, Medicaid/CHIP Division, Texas Health and Human Services Commission, P.O. Box 85200, H600, Austin, Texas 78708; by fax to (512) 491-1953; or by e-mail to tania.colon@hhsc.state.tx.us within 30 days of publication of this proposal in the *Texas Register.*

Public Hearing

A public hearing is scheduled for Tuesday, January 20, 2009 at 9:00 a.m. to 10:00 a.m. in the John H. Winters Building, Public Hearing Room 125, located at 701 W. 51st Street, Austin, Texas 78751. Persons requiring further information, special assistance, or accommodations should contact Pamela Dunn at (512) 491-1488.

1 TAC §§354.1430, 354.1432, 354.1434

(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Texas Health and Human Services Commission or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

Statutory Authority

The repeals are proposed under Texas Government Code §531.033, which provides the Executive Commissioner of HHSC with broad rulemaking authority; and Human Resources Code §32.021 and Texas Government Code §531.021(a), which provide HHSC with the authority to administer the federal medical assistance (Medicaid) program in Texas.

The proposed repeals affect the Human Resources Code, Chapter 32, and the Texas Government Code, Chapter 531. No other statutes, articles, or codes are affected by this proposal.

§354.1430. Definitions.

§354.1432. Benefits and Limitations.

§354.1434. Requirements for Telemedicine Providers.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on December 19, 2008.

TRD-200806612
Steve Aragón
Chief Counsel
Texas Health and Human Services Commission
Earliest possible date of adoption: February 1, 2009
For further information, please call: (512) 424-6900

♦ ♦ ♦

1 TAC §354.1430, §354.1432

Statutory Authority

The new rules are proposed under Texas Government Code §531.033, which provides the Executive Commissioner of HHSC with broad rulemaking authority; and Human Resources Code §32.021 and Texas Government Code §531.021(a), which provide HHSC with the authority to administer the federal medical assistance (Medicaid) program in Texas.

The proposed rules affect the Human Resources Code, Chapter 32, and the Texas Government Code, Chapter 531. No other statutes, articles, or codes are affected by this proposal.

§354.1430. Definitions.

The following words and terms, when used in this chapter, have the following meanings.

(1) Telemedicine--The practice of health care delivery, by a provider who is located at a site other than the site where the patient is located, for the purposes of evaluation, diagnosis, consultation, or treatment that requires the use of advanced telecommunications technology. Telephone conversations, chart reviews, electronic mail messages, and facsimile transmissions are not considered telemedicine.

(2) Distant site provider--The distant site provider uses telemedicine to provide health care services to the patient. The distant site provider must be a physician who is licensed to practice medicine in Texas under Subtitle B, Title 3, Occupations Code.

(3) Distant site location--The distant site location is where the distant site provider is physically located.

(4) Patient site presenter--The patient site presenter is the individual at the patient site who introduces the patient to the distant site provider for examination, and to whom the distant site provider

may delegate tasks and activities in accordance with 22 TAC §174.6 (relating to Delegation to and Supervision of Telepresenters). The patient site presenter must be:

(A) Licensed or certified in this state to perform health care services and must present and/or be delegated tasks and activities only within the scope of the individual's licensure or certification; and/or

(B) A qualified mental health professional (QMHP) as defined in 25 TAC §412.303(31) (relating to Definitions).

(5) Patient site location--The patient site location is where the client is physically located. It is limited to the following locations:

(A) State hospital;

(B) State school;

(C) One of the following locations in a rural or underserved area:

(i) Physician office;

(ii) Hospital;

(iii) Rural health clinic (RHC);

(iv) Federally qualified health center (FQHC);

(v) Intermediate care facility for persons with mental retardation (ICF/MR) that is not a state school;

(vi) Community center as defined in Health and Safety Code §534.001 or outreach site associated with a community center; or

(vii) Local health department established under Health and Safety Code §121.031, or public health district established under Health and Safety Code §121.041.

(6) State hospital--A state hospital is a hospital with an inpatient component and operated by the Department of State Health Services.

(7) State school--Also referred to as a "State MR Facility." A state school or state center with a mental retardation residential component as defined in 40 TAC §2.253(42) (relating to Definitions).

(8) Rural area--A rural area is defined as a county that is not included in a metropolitan statistical area as defined by the U.S. Office of Management and Budget (OMB) according to the most recent United States Census Bureau population estimates.

(9) Underserved area--An underserved area is an area that meets the current definition of a medically underserved area or medically underserved population (MUP) by the U.S. Department of Health and Human Services (DHHS), until DHHS adopts and implements the rule proposed in the *Federal Register* on February 29, 2008, that would revise and consolidate the criteria and processes for designating MUPs and health professional shortage areas. At that time, an underserved area will be defined as an area that meets the DHHS Index of Primary Care Underservice criteria.

§354.1432. Benefits and Limitations.

(a) Services provided via telemedicine are a benefit of the Texas Medicaid Program as provided in this rule.

(1) Services provided via telemedicine must be provided through direct "face-to-face" interactive video communications with the client to be eligible for reimbursement.

(2) The following services provided by a distant site provider may be reimbursed if provided via telemedicine:

(A) Consultations;

(B) Office or other outpatient visits;

(C) Psychiatric diagnostic interviews;

(D) Pharmacologic management; and

(E) Psychotherapy.

(b) Texas Health Steps (THSteps), also known as Early and Periodic Screening, Diagnosis and Treatment, preventive health visits are not reimbursed if performed via telemedicine. Health care or treatment provided via telemedicine subsequent to a THSteps preventive health visit for conditions identified during a THSteps preventive health visit may be reimbursed.

(c) The patient site presenter must be "readily available." "Readily available" means that the patient site presenter must be at the patient site location when the service is provided via telemedicine.

(d) Documentation in the patient's medical record for a service provided via telemedicine must be the same as for a comparable in-person service.

(e) Confidentiality of the patient's medical information is to be maintained as required by Occupations Code, Chapters 111 and 159 and other applicable law.

(f) The requirements for authorized disclosure of confidential information relating to clients in state hospitals and residents in state schools are included, but not limited to, Health and Safety Code §611.004.

(g) Services provided via telemedicine are reimbursed in accordance with the Medicaid reimbursement methodology as defined in §355.7001 of this title (relating to Telemedicine Services Reimbursement).

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on December 19, 2008.

TRD-200806613
Steve Aragón
Chief Counsel
Texas Health and Human Services Commission
Earliest possible date of adoption: February 1, 2009
For further information, please call: (512) 424-6900

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CHAPTER 355. REIMBURSEMENT RATES
SUBCHAPTER G. TELEMEDICINE SERVICES AND OTHER COMMUNITY-BASED SERVICES

The Texas Health and Human Services Commission (HHSC) proposes the repeal of 1 TAC §355.7001, concerning Telemedicine Services Reimbursement, and to replace it with new 1 TAC §355.7001, concerning Telemedicine Services Reimbursement.

Background and Justification

The Texas Medicaid program allows certain services to be provided via telemedicine. During a telemedicine visit, a distant site provider provides services to a patient who is located at another

site (the patient site). A presenter at the patient site introduces the patient to the distant site provider for examination and may assist in the telemedicine visit.

Senate Bill (SB) 24 and SB 760, 80th Legislature, Regular Session, 2007, directed HHSC to make policy and reimbursement methodology changes to the Medicaid telemedicine program. SB 24 requires HHSC to provide reimbursement under the Medicaid program for an office visit provided through telemedicine by a physician who is assessing and evaluating the patient from a distant site under certain conditions. This bill also directed HHSC to develop rules to either: (1) allocate reimbursement between a physician consulting from a distant site and a health professional present with the patient; or (2) establish a facility fee that the distant site provider must pay the patient site provider. SB 760 changes the Medicaid telemedicine terminology and directs HHSC to encourage all health-care providers and health-care facilities to provide services via telemedicine.

In order to implement SB 24 and SB 760, and to further align Texas Medicaid telemedicine services with Medicare, thereby reducing provider confusion, HHSC Rate Analysis is proposing the repeal and replacement of the telemedicine reimbursement methodology rule at 1 TAC §355.7001 in accordance with the proposed new program policy rules at 1 TAC §354.1430 and 1 TAC §354.1432.

The proposed new policy rules remove the limitations on the location of the distant site, expand the options for distant site locations and the distant site provider base, as well as expand the distant site professional services to include office visits, pharmacologic management, psychiatric diagnostic interview examinations, and individual psychotherapy. The proposed program policy rules allow any licensed or certified health professional to serve as the patient site provider/presenter and add local health departments as patient site locations.

Under the current telemedicine reimbursement rule, Medicaid reimburses both the physician at the distant site and allowable providers at the patient site a professional fee for telemedicine services in the same manner as their other professional services. The proposed new §355.7001 states that HHSC will reimburse the patient site location a facility fee, rather than paying the patient site presenter a professional fee. The change to a facility fee for the patient site more closely aligns Medicaid telemedicine reimbursement with Medicare and complements the new program policy rules, which expand the types of health professionals that may serve as the patient site provider/presenter. The new rule also states that Medicaid will reimburse physicians who bill as distant site providers for their Medicaid telemedicine professional services in the same manner as their other professional services, which is consistent with the current rule.

Section-by-Section Summary

HHSC proposes to repeal current 1 TAC §355.7001 and replace it with new 1 TAC §355.7001 to outline reimbursement for distant site physicians and patient site locations.

New subsection (a) states that Medicaid will reimburse physicians who bill as distant site providers for their Medicaid telemedicine professional services in the same manner as their other professional services, which is consistent with the current rule.

New subsection (b) changes the reimbursement methodology for patient site providers. HHSC proposes that patient site locations be reimbursed a facility fee determined by HHSC, rather than paying patient site providers professional fees.

Fiscal Note

Thomas M. Suehs, Deputy Executive Commissioner for Financial Services, has determined that during the first five-year period the proposed repeal and new rule are in effect there will be a fiscal impact to state government of $105,772 (SFY2009); $118,203 (SFY2010); $130,940 (SFY2011); $143,249 (SFY2012); and $156,714 (SFY2013) as a result of allowing a wider array of providers, presenters, locations, and services at the patient and distant sites and the addition of a facility fee payable to the patient site. The proposed repeal and new rule will not result in any fiscal implications for local health and human services agencies. Local governments will not incur additional costs.

Small and Micro-business Impact Analysis

Mr. Suehs has also determined that there will be no effect on small businesses or micro-businesses to comply with the repeal and new rule as proposed, as they will not be required to alter their business practices as a result of the proposal. There are no anticipated economic costs to persons who are required to comply with the proposal. There is no anticipated negative impact on local employment.

Public Benefit

Chris Traylor, Associate Commissioner for Medicaid and CHIP, has determined that for each year of the first five years the proposed repeal and new section are in effect, the public will benefit from the adoption of the proposal. The anticipated public benefit of the proposed repeal and new rule will be improved access to and quality of health care services.

Regulatory Analysis

HHSC has determined that this proposal is not a "major environmental rule" as defined by §2001.0225 of the Texas Government Code. "Major environmental rule" is defined to mean a rule the specific intent of which is to protect the environment or reduce risk to human health from environmental exposure and that may adversely affect, in a material way, the economy, a sector of the economy, productivity, competition, jobs, the environment or the public health and safety of a state or a sector of the state. This proposal is not specifically intended to protect the environment or reduce risks to human health from environmental exposure.

Takings Impact Assessment

HHSC has determined that this proposal does not restrict or limit an owner's right to his or her property that would otherwise exist in the absence of government action and, therefore, does not constitute a taking under §2007.043 of the Texas Government Code. Under §2007.003(b) of the Texas Government Code, HHSC has determined that Chapter 2007 of the Texas Government Code does not apply to this rule. The changes this rule makes do not implicate a recognized interest in private real property. Accordingly, HHSC is not required to complete a takings impact assessment regarding this rule.

Public Comment

Written comments on the proposed repeal and new section may be submitted to Guilda Roman, Rate Analyst, Rate Analysis for Acute Care Services, Texas Health and Human Services Commission, P.O. Box 85200, H400, Austin, Texas 78708; by fax to (512) 491-1998; or by e-mail to guilda.roman@hhsc.state.tx.us

within 30 days of publication of this proposal in the *Texas Register.*

Public Hearing

There will be no public hearing on the proposed repeal and replacement of the reimbursement methodology rule for telemedicine services.

1 TAC §355.7001

(Editor's note: The text of the following section proposed for repeal will not be published. The section may be examined in the offices of the Texas Health and Human Services Commission or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

Statutory Authority

The repeal is proposed under Texas Government Code §531.033, which provides the Executive Commissioner of HHSC with broad rulemaking authority; and Human Resources Code §32.021 and Texas Government Code §531.021(a), which provide HHSC with the authority to administer the federal medical assistance (Medicaid) program in Texas.

The proposed repeal affects the Human Resources Code, Chapter 32, and the Texas Government Code, Chapter 531. No other statutes, articles, or codes are affected by this proposal.

§355.7001. Telemedicine Services Reimbursement.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on December 19, 2008.

TRD-200806614
Steve Aragón
Chief Counsel
Texas Health and Human Services Commission
Earliest possible date of adoption: February 1, 2009
For further information, please call: (512) 424-6900

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1 TAC §355.7001

Statutory Authority

The new rule is proposed under Texas Government Code §531.033, which provides the Executive Commissioner of HHSC with broad rulemaking authority; and Human Resources Code §32.021 and Texas Government Code §531.021(a), which provide HHSC with the authority to administer the federal medical assistance (Medicaid) program in Texas.

The proposed rule affects the Human Resources Code, Chapter 32, and the Texas Government Code, Chapter 531. No other statutes, articles, or codes are affected by this proposal.

§355.7001. Telemedicine Services Reimbursement.

(a) Physicians as telemedicine distant site providers, as defined in §354.1430(2) of this title (relating to Definitions), are reimbursed for their Medicaid telemedicine professional services in the same manner as their other professional services in accordance with §355.8085 of this title (relating to Texas Medicaid Reimbursement Methodology (TMRM) for Physicians and Certain Other Practitioners).

(b) Telemedicine patient site locations, as defined in §354.1430(5) of this title, are reimbursed a facility fee determined by the Health and Human Services Commission.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on December 19, 2008.

TRD-200806615
Steve Aragón
Chief Counsel
Texas Health and Human Services Commission
Earliest possible date of adoption: February 1, 2009
For further information, please call: (512) 424-6900

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TITLE 7. BANKING AND SECURITIES

PART 5. OFFICE OF CONSUMER CREDIT COMMISSIONER

CHAPTER 84. MOTOR VEHICLE INSTALLMENT SALES

SUBCHAPTER A. GENERAL PROVISIONS

7 TAC §84.108

The Finance Commission of Texas (commission) proposes new §84.108, concerning Nominal Additional Consideration for Bailment or Lease, with regard to motor vehicle sales finance dealers licensed by the Office of Consumer Credit Commissioner.

The purpose of proposed new §84.108 is to clarify the term "nominal additional consideration" as it is used in Texas Finance Code, §348.002. This section of the Finance Code provides the criteria for determining whether a particular bailment or lease agreement should be classified as a retail installment transaction or whether it is a true bailment or lease. One factor for determining if a bailment or lease agreement is a retail installment transaction is whether the consumer pays nominal consideration at the end of the lease term.

There is currently no definition for the term "nominal" in Chapter 348 of the Texas Finance Code. Chapter 348, however, does contain a definition for "retail installment contract." Section 348.001(6) states in pertinent part: "The *term includes* a chattel mortgage, a conditional sale contract, a security agreement, and *a document that evidences a bailment or lease described by Section 348.002*." (emphasis added). Thus, Chapter 348 clearly applies to bailment or lease agreements that meet the statutory criteria.

Section 348.002 sets out the requirements whereby certain bailment or lease agreements are classified as retail installment transactions. Section 348.002 requires that: (1) the contract price for use of the vehicle must be "substantially equal to or exceed [] the value of the vehicle; and" (2) upon full completion of the bailment or lease, the consumer becomes the owner of the vehicle, "or, for no or *nominal additional consideration*, has the option to become the owner of the vehicle." (emphasis added).

From the agency's experience with the motor vehicle sales finance industry, the determination of what is "nominal additional consideration" in the context of §348.002 has been difficult. The term "nominal consideration" appears in several legal frameworks. The most similar context to Chapter 348 is found in the Texas Business and Commerce Code, which has a provision dealing with the difference between a lease and a security interest. This provision establishes that "nominal consideration" is one factor to use when determining whether the transaction is a lease or a security interest. The factor and its use are parallel to how "nominal" is used in §348.002 (determination of whether an agreement is a retail installment contract or a lease).

Under the Texas Business and Commerce Code, the primary test for ascertaining whether consideration is nominal is the economic realities test (also known as the sensible person test), which states that if, at the end of the lease term, the lessee has no reasonable alternative but to exercise the option, the transaction is a secured installment sale. This test is also expressed as follows: if at the end of the lease, the only sensible course economically for the lessee would be to exercise the lessee's option, the lease is actually a secured transaction.

The effect of proposed §84.108 will be to provide clarity as to the use of "nominal additional consideration" in a bailment or lease described by §348.002, thereby enabling licensees to more easily determine if their agreements must comply with the provisions of Chapter 348. Proposed §84.108 interprets "nominal" only for purposes of §348.002.

Leslie L. Pettijohn, Consumer Credit Commissioner, has determined that for the first five-year period the rule is in effect there will be no fiscal implications for state or local government as a result of administering the rule. Commissioner Pettijohn has also determined that for each year of the first five years the new rule is in effect the public benefit anticipated will be that the commission's rule will clarify the statute.

There will be no cost for persons who are required to comply with the rule as proposed. In order to utilize the rule's interpretation of nominal consideration, fair market value must be determined. Although the cost of purchasing the Kelley Blue Book, the National Automobile Dealers Association price guide, or a similar publication providing fair market values is about $65 per year, it is also possible to get a limited number of free online quotes per day. Many public library collections have copies of the Kelley Blue Book available as well. Also associated with establishing fair market value is the time and labor cost for employees to determine fair market value of vehicles in inventory. It is the agency's experience that persons who are required to comply with the rule are already regularly determining fair market value of vehicles, and it follows that the rule will not impose an additional burden. Thus, there is no anticipated cost to persons who are required to comply with the rule as proposed. There will be no adverse economic effect on small or micro-businesses. There will be no effect on individuals required to comply with the rule as proposed.

It is anticipated that the rule will rarely apply to acceptance companies. The rule would apply to an acceptance company's transaction only if the transaction fell within the scope of Texas Finance Code, §348.002. A transaction falls within §348.002 when the amount the consumer pays for use of the vehicle is equal to or greater than the cash price of the vehicle, and the consideration at the end of the lease for becoming the owner of the vehicle is nominal. It is the agency's experience that acceptance companies rarely enter into transactions where the consumer has agreed to pay an amount equal to or greater than the cash price of the vehicle, and hence, the rule is expected to rarely apply to acceptance companies.

Comments on the proposed new rule may be submitted in writing to Laurie Hobbs, Assistant General Counsel, Office of Consumer Credit Commissioner, 2601 North Lamar Boulevard, Austin, Texas 78705-4207 or by email to laurie.hobbs@occc.state.tx.us. To be considered, a written comment must be received on or before the 31st day after the date the proposed rule is published in the *Texas Register*. At the conclusion of the 31st day after the proposed rule is published in the *Texas Register*, no further written comments will be considered or accepted by the commission.

This new section is proposed under Texas Finance Code, §11.304, which authorizes the Finance Commission to adopt rules to enforce Title 4 of the Texas Finance Code. Additionally, Texas Finance Code, §348.513 grants the Finance Commission the authority to adopt rules to enforce the motor vehicle installment sales chapter.

This rule affects Texas Finance Code, Chapter 348.

§84.108. Nominal Additional Consideration for Bailment or Lease.

(a) Economically reasonable course of action test. The determination of whether additional consideration is nominal under §348.002 should consider whether the consumer's economically reasonable course of action is to exercise the option to purchase the vehicle at the end of the bailment or lease.

(b) Fair market value. For purposes of this section, if the lessor or bailor fails to set a contemplated residual value for the vehicle in the lease, the fair market value of the motor vehicle is measured at the time the option to purchase may be exercised. Fair market value may be determined by the wholesale price in the Kelley Blue Book, National Automobile Dealers Association price guide, Kelley Blue Book Official Residual Value Guide or a similar publication.

(c) Variance between purchase price and fair market value. When the parties enter the lease or bailment, the contemplated value of the vehicle at the end of the lease or bailment must exceed the option price to be considered nominal additional consideration. Nominality must be determined by considering the parties' objective understanding of whether the consumer will exercise the option to purchase at the end of the lease. The economically reasonable course of action is based on the relationship of the projected value of the vehicle at the end of the lease and the option price in the lease. The greater the projected value of the vehicle exceeds the option price, the greater the likelihood that the parties' objective understanding would be that the consumer would exercise the option to purchase at the end of the lease or bailment and therefore that the lease or bailment would meet the economically reasonable course of action test.

(d) This section only applies to transactions in which the property is used for personal, family, or household purpose. If the property is typically used for personal, family or household purposes, a rebuttable presumption exists that the property was used for personal, family or household purposes.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on December 19, 2008.

TRD-200806638

Leslie L. Pettijohn
Consumer Credit Commissioner
Office of Consumer Credit Commissioner
Earliest possible date of adoption: February 1, 2009
For further information, please call: (512) 936-7621

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TITLE 10. COMMUNITY DEVELOPMENT

PART 1. TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

CHAPTER 1. ADMINISTRATION
SUBCHAPTER A. GENERAL POLICIES AND PROCEDURES

10 TAC §1.23

The Texas Department of Housing and Community Affairs (the Department) proposes an amendment to §1.23, concerning the State of Texas Low Income Housing Plan and Annual Report (SLIHP). The section adopts by reference the annual State of Texas Low Income Housing Plan and Annual Report (SLIHP). The purpose of the SLIHP is to serve as a comprehensive reference on statewide housing needs, housing resources, and strategies for funding allocations. The document reviews the Department's programs, current and future policies, resource allocation plan to meet state housing needs, and reports on 2008 performance. The Department is required to submit the SLIHP annually to its Board of Directors in accordance with §2306.072, Texas Government Code. The proposed amendment would adopt by reference the 2009 State of Texas Low Income Housing Plan and Annual Report (SLIHP).

Mr. Michael Gerber, Executive Director, has determined that for the first five-year period the amended section is in effect there will be no fiscal implications for state or local governments as a result of enforcing or administering the amended section as proposed.

Mr. Gerber has also determined that for each year of the first five years the amended section is in effect the public benefit anticipated will be improved communication with the public regarding the Department's programs and activities. There will be no effect on small businesses or persons. There is no anticipated economic cost to persons who are required to comply with the amended section as proposed.

The full text of the 2009 SLIHP may be viewed at the Department's website: www.tdhca.state.tx.us. The public may also receive a copy of the 2009 SLIHP by contacting the Department's Housing Resource Center at (512) 475-3976.

The public comment period will be held January 5, 2009 to February 2, 2009. Written comments may be submitted to Texas Department of Housing and Community Affairs, Brenda Hull, P.O. Box 13941, Austin, Texas 78711-3941, by e-mail to the following address: brenda.hull@tdhca.state.tx.us, or by fax to (512) 469-9606.

The TDHCA Board of Directors will consider the final 2009 SLIHP at the March 2009 board meeting. The 2009 SLIHP will become effective 20 days after being filed in the Office of the Secretary of State.

The amended section is proposed pursuant to the authority of the Texas Government Code, Chapter 2306, which provides the Department with the authority to adopt rules governing the administration of the Department and its programs.

No other statutes, articles, or codes are affected by the proposed amendment.

§1.23. State of Texas Low Income Housing Plan and Annual Report (SLIHP).

The Texas Department of Housing and Community Affairs (the Department) adopts by reference the 2009 [~~2008~~] State of Texas Low Income Housing Plan and Annual Report (SLIHP). The full text of the 2009 [~~2008~~] SLIHP may be viewed at the Department's website: www.tdhca.state.tx.us. The public may also receive a copy of the 2009 [~~2008~~] SLIHP by contacting the Department's Housing Resource Center at (512) 475-3976.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on December 19, 2008.

TRD-200806602
Michael Gerber
Executive Director
Texas Department of Housing and Community Affairs
Earliest possible date of adoption: February 1, 2009
For further information, please call: (512) 475-3916

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CHAPTER 53. HOME PROGRAM RULE
SUBCHAPTER A. GENERAL

10 TAC §53.1, §53.8

The Texas Department of Housing and Community Affairs (Department) proposes amendments to 10 TAC Chapter 53, Subchapter A, §53.1 and §53.8. The proposed amendments make changes to the existing rule to ensure compliance with all statutory requirements, formalize existing policy and guidelines contained in the HOME program manuals and include revisions of necessary policy and administrative changes to further enhance operations by deleting compliance penalty provisions from the rule.

Mr. Michael Gerber, Executive Director, has determined that for the first five-year period the amended sections are in effect there will be no fiscal implications for state or local governments as a result of enforcing or administering the amended sections as proposed.

Mr. Gerber has also determined that for each year of the first five-years the amended sections are in effect the public benefit anticipated as a result of enforcing the amended sections will be enhanced compliance with all statutory requirements, formalized policy and guidelines contained in the HOME program manuals, and further enhanced operations of the HOME program. There will be no effect on small businesses or persons. There is no anticipated economic cost to persons who are required to comply with the amended sections as proposed.

The public comment period will be held January 2, 2009 to February 2, 2009 to receive input on these amendments. Written comments may be submitted to Texas Department of Hous-

ing and Community Affairs, Home Division, P.O. Box 13941, Austin, Texas 78711-3941, by e-mail to the following address: HOME@tdhca.state.tx.us, or by fax to (512) 475-0220. ALL COMMENTS MUST BE RECEIVED BY FEBRUARY 2, 2009.

The amended sections are proposed pursuant to the authority of the Texas Government Code, Chapter 2306, which provides the Department with the authority to adopt rules governing the administration of the Department and its programs.

The amended sections affect no other code, article or statute.

§53.1. Purpose.

This chapter [~~Chapter~~] clarifies the use and administration of all funds provided to the Texas Department of Housing and Community Affairs (Department) by the United States Department of Housing and Urban Development (HUD) pursuant to Title II of the Cranston-Gonzalez National Affordable Housing Act of 1990 (42 USC §§12701-12839) and HUD regulations at 24 CFR, Part 92. All provisions of this chapter apply to any Application received on or after the date of adoption of this chapter by the Department's Board. Existing Contracts or Applications received prior to the date of adoption of this chapter may be amended in writing at the request of the Administrator or Applicant, and with Department approval, to subject the Contract or Application to all provisions of this chapter. Amendments proposing only partial adoption of this chapter are prohibited and no amendment adopting this chapter shall be granted if, in the discretion of the Department, any of the provisions of this chapter conflict with the NOFA under which the existing Contract was awarded or Application was submitted. The State's HOME Program is designed to:

(1) - (4) (No change.)

§53.8. Notice of Receipt of Application or Proposed Application.

(a) Not later than the 14th day after the date an Application or a proposed Application for housing funds described by §2306.111 has been filed for multifamily or single family development, the Department shall provide written notice of the filing of the Application or proposed Application to the following Persons:

(1) - (6) (No change.)

(b) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on December 19, 2008.

TRD-200806603
Michael Gerber
Executive Director
Texas Department of Housing and Community Affairs
Earliest possible date of adoption: February 1, 2009
For further information, please call: (512) 475-3916

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SUBCHAPTER C. PROGRAM ACTIVITIES

10 TAC §53.30

The Texas Department of Housing and Community Affairs (Department) proposes amendments to 10 TAC Chapter 53, Subchapter C, §53.30. The proposed amendment makes changes to the existing rule to ensure compliance with all statutory requirements, formalize existing policy and guidelines contained in the HOME program manuals and include revisions of necessary policy and administrative changes to further enhance operations by deleting compliance penalty provisions from the rule.

Mr. Michael Gerber, Executive Director, has determined that for the first five-year period the amended section is in effect there will be no fiscal implications for state or local governments as a result of enforcing or administering the amended section as proposed.

Mr. Gerber has also determined that for each year of the first five-years the amended section is in effect the public benefit anticipated as a result of enforcing the amended section will be enhanced compliance with all statutory requirements, formalized policy and guidelines contained in the HOME program manuals, and further enhanced operations of the HOME program. There will be no effect on small businesses or persons. There is no anticipated economic cost to persons who are required to comply with the amended section as proposed.

The public comment period will be held January 2, 2009 to February 2, 2009 to receive input on this amendment. Written comments may be submitted to Texas Department of Housing and Community Affairs, Home Division, P.O. Box 13941, Austin, Texas 78711-3941, by e-mail to the following address: HOME@tdhca.state.tx.us, or by fax to (512) 475-0220. ALL COMMENTS MUST BE RECEIVED BY FEBRUARY 2, 2009.

The amended section is proposed pursuant to the authority of the Texas Government Code, Chapter 2306, which provides the Department with the authority to adopt rules governing the administration of the Department and its programs.

The amended section affects no other code, article or statute.

§53.30. Activities in Consolidated Plan.

Through its Consolidated Plan, the Department has identified general guidelines for funding of a Program Activity. Applicants that meet the qualifications identified in this chapter and under the terms of a NOFA may apply for any Program Activity the Department funds. [~~All provisions of this chapter apply to any Application received on or after the date of adoption of this chapter by the Department's Board. Existing Contracts or Applications received prior to the date of adoption of this chapter may be amended in writing at the request of the Administrator or Applicant, and with Department approval, to subject the Contract or Application to all provisions of this chapter. Amendments proposing only partial adoption of this chapter are prohibited and no amendment adopting this chapter shall be granted if, in the discretion of the Department, any of the provisions of this chapter conflict with the NOFA under which the existing Contract was awarded or Application was submitted.~~]

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on December 19, 2008.

TRD-200806604
Michael Gerber
Executive Director
Texas Department of Housing and Community Affairs
Earliest possible date of adoption: February 1, 2009
For further information, please call: (512) 475-3916

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SUBCHAPTER D. APPLICATION REQUIREMENTS AND PROCEDURES

10 TAC §53.47

The Texas Department of Housing and Community Affairs (Department) proposes amendments to 10 TAC Chapter 53, Subchapter D, §53.47. The proposed amendment makes changes to the existing rule to ensure compliance with all statutory requirements, formalize existing policy and guidelines contained in the HOME program manuals and include revisions of necessary policy and administrative changes to further enhance operations by deleting compliance penalty provisions from the rule.

Mr. Michael Gerber, Executive Director, has determined that for the first five-year period the amended section is in effect there will be no fiscal implications for state or local governments as a result of enforcing or administering the amended section as proposed.

Mr. Gerber has also determined that for each year of the first five-years the amended section is in effect the public benefit anticipated as a result of enforcing the amended section will be enhanced compliance with all statutory requirements, formalized policy and guidelines contained in the HOME program manuals, and further enhanced operations of the HOME program. There will be no effect on small businesses or persons. There is no anticipated economic cost to persons who are required to comply with the amended section as proposed.

The public comment period will be held January 2, 2009 to February 2, 2009 to receive input on this amendment. Written comments may be submitted to Texas Department of Housing and Community Affairs, Home Division, P.O. Box 13941, Austin, Texas 78711-3941, by e-mail to the following address: HOME@tdhca.state.tx.us, or by fax to (512) 475-0220. ALL COMMENTS MUST BE RECEIVED BY FEBRUARY 2, 2009.

The amended section is proposed pursuant to the authority of the Texas Government Code, Chapter 2306, which provides the Department with the authority to adopt rules governing the administration of the Department and its programs.

The amended section affects no other code, article or statute.

§53.47. Application and Award Limitations.

(a) The Department reserves the right to reduce the amount requested in an Application based on Program Activity or Project feasibility, underwriting analysis, or availability of funds.

(1) - (3) (No change.)

(4) The Contract award amount for CHDO Operating Expenses shall not exceed:

(A) (No change.)

(B) $50,000 [~~$75,000~~], whichever is greater.

(C) (No change.)

(5) (No change.)

(b) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on December 19, 2008.

TRD-200806605
Michael Gerber
Executive Director
Texas Department of Housing and Community Affairs
Earliest possible date of adoption: February 1, 2009
For further information, please call: (512) 475-3916

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SUBCHAPTER G. LOANS AND CONTRACT ADMINISTRATION

10 TAC §53.80

The Texas Department of Housing and Community Affairs (Department) proposes amendments to 10 TAC Chapter 53, Subchapter G, §53.80. The proposed amendment makes changes to the existing rule to ensure compliance with all statutory requirements, formalize existing policy and guidelines contained in the HOME program manuals and include revisions of necessary policy and administrative changes to further enhance operations by deleting compliance penalty provisions from the rule.

Mr. Michael Gerber, Executive Director, has determined that for the first five-year period the amended section is in effect there will be no fiscal implications for state or local governments as a result of enforcing or administering the amended section as proposed.

Mr. Gerber has also determined that for each year of the first five-years the amended section is in effect the public benefit anticipated as a result of enforcing the amended section will be enhanced compliance with all statutory requirements, formalized policy and guidelines contained in the HOME program manuals, and further enhanced operations of the HOME program. There will be no effect on small businesses or persons. There is no anticipated economic cost to persons who are required to comply with the amended section as proposed.

The public comment period will be held January 2, 2009 to February 2, 2009 to receive input on this amendment. Written comments may be submitted to Texas Department of Housing and Community Affairs, Home Division, P.O. Box 13941, Austin, Texas 78711-3941, by e-mail to the following address: HOME@tdhca.state.tx.us, or by fax to (512) 475-0220. ALL COMMENTS MUST BE RECEIVED BY FEBRUARY 2, 2009.

The amended section is proposed pursuant to the authority of the Texas Government Code, Chapter 2306, which provides the Department with the authority to adopt rules governing the administration of the Department and its programs.

The amended section affects no other code, article or statute.

§53.80. Documents Supporting Mortgage Loans.

(a) - (d) (No change.)

(e) Documentation required for OCC and HBA with Rehabilitation Loans: The Administrator must ensure the following documents are submitted to the Department in order to request preparation of Loan documents [~~be prepared~~] for the Household:

(1) A title report or a commitment to issue a title policy not older than ninety (90) days that:

(A) evidences eligible forms of homeownership pursuant to §53.31(b) of this chapter and 24 CFR §92.2; and

(B) evidences no tax lien, [~~no~~] child support lien, [~~and no~~] mechanic's or materialman's lien or any other restrictions or en-

cumbrances that impair the good and marketable nature of title to the ownership interest. The title report must be a [~~non-insurance~~] report of the property reflecting [~~from~~] the current owner's [~~date of the last~~] deed vesting title [~~to the present~~], including complete deed information[~~;~~] grantees, grantors, execution and recording dates, recording references, and legal description, as well as all existing [~~open~~] mortgages/deed of liens [~~trusts~~];

(2) - (5) (No change.)

(f) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on December 19, 2008.

TRD-200806606
Michael Gerber
Executive Director
Texas Department of Housing and Community Affairs
Earliest possible date of adoption: February 1, 2009
For further information, please call: (512) 475-3916

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TITLE 19. EDUCATION

PART 2. TEXAS EDUCATION AGENCY

CHAPTER 70. TECHNOLOGY-BASED INSTRUCTION

SUBCHAPTER AA. COMMISSIONER'S RULES CONCERNING STATE VIRTUAL SCHOOL NETWORK

19 TAC §70.1001

The Texas Education Agency (TEA) proposes new §70.1001, concerning criteria for electronic courses. The proposed new rule would establish quality-related criteria for electronic courses authorized by Senate Bill (SB) 1788, 80th Texas Legislature, 2007.

SB 1788, 80th Texas Legislature, 2007, created the Texas Education Code (TEC), Chapter 30A, to establish a state virtual school network (SVSN) to provide education to students through electronic courses delivered via the Internet. The statute authorizes the TEA to evaluate courses offered through the SVSN for certain criteria, including quality-related criteria for the courses.

Proposed new 19 TAC §70.1001, Criteria for Electronic Courses, would specify the quality-related criteria used by the TEA to evaluate and approve electronic courses submitted for inclusion in the SVSN. Specifically, the rule would establish the National Standards of Quality for Online Courses endorsed by the North American Council for Online Learning as the quality-related criteria for electronic courses.

Anita Givens, acting associate commissioner for standards and programs, has determined that for the first five-year period the new rule is in effect there will be no additional costs for state or local government as a result of enforcing or administering the new rule.

There is no direct adverse economic impact for small businesses and microbusinesses; therefore, no regulatory flexibility analysis, specified in Texas Government Code, §2006.002, is required.

Ms. Givens has determined that for each year of the first five years the new rule is in effect the public benefit anticipated as a result of enforcing the new rule will be electronic courses that have been reviewed to ensure compliance with quality guidelines. The electronic courses will provide additional options to students and allow school districts and open-enrollment charter schools to expand their curriculum, offer the full schedule of courses required by the Recommended High School Program and the Distinguished Achievement High School Program, and meet the individual needs of their students. There is no anticipated economic cost to persons who are required to comply with the proposed new rule.

The public comment period on the proposal begins January 2, 2009, and ends February 2, 2009. Comments on the proposal may be submitted to Cristina De La Fuente-Valadez, Policy Coordination Division, Texas Education Agency, 1701 North Congress Avenue, Austin, Texas 78701, (512) 475-1497. Comments may also be submitted electronically to *rules@tea.state.tx.us* or faxed to (512) 463-0028. A request for a public hearing on the proposal submitted under the Administrative Procedure Act must be received by the commissioner of education not more than 15 calendar days after notice of the proposal has been published in the *Texas Register* on January 2, 2009.

The new rule is proposed under the TEC, §30A.103, which authorizes the commissioner of education to adopt rules to establish additional quality-related criteria for electronic courses offered through the state virtual school network.

The proposed new rule implements the TEC, §30A.103.

§70.1001. Criteria for Electronic Courses.

(a) Quality-related criteria.

(1) The National Standards of Quality for Online Courses endorsed by the North American Council for Online Learning (NACOL) are established by the commissioner of education as the quality-related criteria for electronic courses under the Texas Education Code (TEC), §30A.103(c).

(2) The Texas Education Agency (TEA) shall use the most recent National Standards of Quality for Online Courses endorsed by the NACOL to evaluate courses submitted for offering through the state virtual school network (SVSN), as specified in the annual course submission and approval schedule established by the TEA.

(3) Electronic courses must meet the National Standards of Quality for Online Courses and be approved by the TEA to be offered through the SVSN.

(b) Course criteria. Electronic courses offered through the SVSN must meet general course eligibility requirements in accordance with the TEC, §30A.104.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on December 19, 2008.

TRD-200806640

Cristina De La Fuente-Valadez
Director, Policy Coordinator
Texas Education Agency
Earliest possible date of adoption: February 1, 2009
For further information, please call: (512) 475-1497

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CHAPTER 100. CHARTERS
SUBCHAPTER AA. COMMISSIONER'S RULES CONCERNING OPEN-ENROLLMENT CHARTER SCHOOLS
DIVISION 2. COMMISSIONER ACTION AND INTERVENTION

19 TAC §100.1033

The Texas Education Agency (TEA) proposes an amendment to §100.1033, concerning open-enrollment charter schools. The section addresses charter amendments. The proposed amendment would include language to allow charter holders to submit a new type of substantive amendment request for commissioner approval. This rule action is proposed pursuant to amended federal non-regulatory guidance for the Elementary and Secondary Education Act (ESEA), Section 5202(d)(1).

Texas Education Code (TEC), §12.114, states that a revision of a charter of an open-enrollment charter school may be made only with the approval of the commissioner. The commissioner of education adopted 19 TAC §100.1033, Charter Amendment, to establish and implement policies and procedures regarding charter amendments. The rule was initially adopted to be effective April 18, 2002, and was last amended to be effective April 6, 2005.

A recent revision to the federal non-regulatory guidance in the ESEA, Section 5202(d)(1), states that a state education agency may award Charter School Program (CSP) start-up subgrants to multiple charter schools established under a single charter where the charter schools meet the CSP definition of "charter school" and truly are separate and distinct from each other.

The proposed amendment to 19 TAC §100.1033 would revise subsection (c), relating to substantive charter amendments, by adding a new paragraph (6) and renumbering the subsequent paragraph accordingly. The proposed new paragraph would add language that permits a charter holder to establish an additional charter school under an existing open-enrollment charter in accordance with the recently revised federal guidelines. The proposed new language would provide the requirements by which the commissioner of education may approve such an amendment request.

No new data collection requirements would result from the proposal. The proposed rule action would require that new school amendments be submitted to the TEA in accordance with the current expansion amendment process. If the charter holder is deemed eligible to apply, the charter holder will be required to complete an application for new school status.

The current procedures require recipients of the CSP start-up funds to submit all information requested by the TEA through periodic activity/progress reports and a final evaluation report. Reports will be due to the TEA no later than 30 days after the close of the reporting period and must contain all requested information in the prescribed format. These reports will be used by the TEA project administrator to evaluate the implementation and progress of grant-funded programs and to determine if modifications or adjustments to the program are necessary.

Laura Taylor, acting associate commissioner for accreditation, has determined that for the first five-year period the amendment is in effect there will be no additional costs for state or local government as a result of enforcing or administering the amendment. Although the proposed amendment itself offers no additional fiscal impact, the revision to this section would allow the TEA to fund CSP start-up grant awards to new charter schools created via the amendment process. The amount of the grant awards will be dependent on the number of charter schools that are eligible for these funds and the amount of federal funds available for this purpose under the ESEA, Section 5201.

Ms. Taylor has determined that for each year of the first five years the amendment is in effect the public benefit anticipated as a result of enforcing the amendment will be to help increase the number of high-quality charter schools available to students across the state, in accordance with the ESEA, Section 5201(3). There is no anticipated economic cost to persons who are required to comply with the proposed amendment.

There is no direct adverse economic impact for small businesses and microbusinesses; therefore, no regulatory flexibility analysis, specified in Texas Government Code, §2006.002, is required.

The public comment period on the proposal begins January 2, 2009, and ends February 2, 2009. Comments on the proposal may be submitted to Cristina De La Fuente-Valadez, Policy Coordination Division, Texas Education Agency, 1701 North Congress Avenue, Austin, Texas 78701, (512) 475-1497. Comments may also be submitted electronically to *rules@tea.state.tx.us* or faxed to (512) 463-0028. A request for a public hearing on the proposal submitted under the Administrative Procedure Act must be received by the commissioner of education not more than 15 calendar days after notice of the proposal has been published in the *Texas Register* on January 2, 2009.

The amendment is proposed under the TEC, Chapter 12, Subchapter D, which authorizes the commissioner of education to adopt rules and procedures related to the implementation of open-enrollment charter schools. TEC, §12.114, authorizes the commissioner to establish a procedure for approval of charter amendments. TEC, §12.114, states that a revision of a charter of an open-enrollment charter school may be made only with the approval of the commissioner.

The proposed amendment implements the TEC, Chapter 12, Subchapter D.

§100.1033. Charter Amendment.

(a) (No change.)

(b) Non-substantive amendment. A non-substantive amendment is any change to the terms of an open-enrollment charter that is not a substantive amendment under subsection (c) of this section.

(1) - (2) (No change.)

(3) Absent action by the commissioner under paragraph [~~subsection (b)~~] (2) of this subsection [~~section~~], the notice of non-substantive amendment shall be effective after the expiration of 15 business days following receipt of the notice by the TEA division responsible for charter schools.

(c) Substantive amendment. A substantive amendment is any change to the terms of an open-enrollment charter that relates to the following subjects: grade levels, maximum enrollment, geographic boundaries, approved sites, school name, charter holder name, charter holder governance, articles of incorporation, corporate bylaws, management company, admission policy, or the educational program of the school. For purposes of this section, educational program means the educational philosophy or mission of the school or curriculum models or whole-school designs that are inconsistent with those specified in the school's charter. A substantive amendment must be approved by the commissioner under this subsection.

(1) - (4) (No change.)

(5) Expansion amendment. An expansion amendment is a substantive amendment that permits a charter school to extend the grade levels it serves, add the site of an instructional facility, change its geographic boundaries, or increase its maximum allowable enrollment.

(A) - (B) (No change.)

(C) In addition to the requirements of subparagraph (A) of this paragraph, the commissioner may approve an expansion amendment request seeking to increase maximum allowable enrollment only if:

(i) - (ii) (No change.)

(iii) the board resolution required by paragraph (1) of this subsection includes a statement that the charter holder board has considered the business plan required by clause (ii) of this subparagraph [~~paragraph~~] and has determined by majority vote of the board that the enrollment growth proposed in the business plan is prudent; and

(iv) on request, the charter holder files the business plan required by clause (ii) of this subparagraph with the TEA division responsible for charters schools within ten business days.

(D) - (E) (No change.)

(6) New school amendment. A new school amendment is an expansion amendment that permits a charter holder to establish an additional charter school under an existing open-enrollment charter pursuant to federal non-regulatory guidance in the Elementary Secondary Education Act (ESEA), Section 5202(d)(1), as amended.

(A) The commissioner may approve a new school amendment only if:

(i) the charter holder meets all requirements applicable to expansion amendments and substantive amendments set forth in this section;

(ii) the charter holder has been evaluated under the accountability rating system established in §97.1001 of this title (relating to Accountability Rating System):

(I) under the standard accountability procedures for the three preceding rating periods and received a district rating of *Exemplary* or *Recognized* for each of those rating periods;

(II) under the standard accountability procedures for six or more years and received a campus rating on at least one campus of *Exemplary* or *Recognized* for at least 50% of the evaluation periods at this campus and with no campuses rated *Academically Unacceptable* or *Low-Performing* within the six-year period; or

(III) under the alternative education accountability (AEA) procedures for the three preceding rating periods, received a rating of *AEA: Academically Acceptable* in each of the three preceding rating periods, and had Texas Assessment of Knowledge and Skills Progress Indicator rates of 80% or higher for all students in each of those rating periods;

(iii) the charter holder has not been placed in Stages 1-5 in the No Child Left Behind school improvement program for failure to meet Adequate Yearly Progress at any campus or the district in the most current reported year;

(iv) the charter holder completes an application approved by the commissioner;

(v) the new charter school will serve at least 50 students;

(vi) the amendment complies with all requirements of this paragraph; and

(vii) the commissioner determines that the amendment is in the best interest of the students of Texas.

(B) In addition to the requirements of subparagraph (A) of this paragraph, the commissioner may approve a new school amendment only on making the following written findings:

(i) the proposed school satisfies each element of the definition of a public charter school as set forth in the ESEA, Section 5210(1);

(ii) the proposed school is not merely an extension of an existing charter school;

(iii) the proposed school is separate and distinct from the existing charter school(s) established under the open-enrollment charter; and

(iv) the open-enrollment charter, as amended, includes a separate written performance agreement for the proposed school that meets the requirements of the ESEA, Section 5210(1)(L), and the Texas Education Code (TEC), §12.111(a)(3) and (4).

(C) In making the findings required by subparagraph (B)(i) and (iii) of this paragraph, the commissioner shall consider:

(i) the terms of the open-enrollment charter as a whole, as modified by the new school amendment; and

(ii) whether the proposed school shall be established and recognized as a separate school under Texas law.

(D) In making the findings required by subparagraph (B)(ii) and (iii) of this paragraph, the commissioner shall consider whether the proposed school and the existing charter school(s) have separate sites, employees, student populations, and governing bodies and whether their day-to-day operations are carried out by different officers. The presence or absence of any one of these elements, by itself, does not determine whether the proposed school will be found to be separate or part of an existing school. However, the presence or absence of several elements will inform the commissioner's decision.

(E) In making the finding required by subparagraph (B)(iv) of this paragraph, the commissioner shall consider:

(i) whether the proposed school and the existing charter school(s) have distinctly different requirements in their respective written performance agreements; and

(ii) the extent to which the performance agreement for the proposed school imposes higher standards than those imposed by the TEC, §12.104(b)(2)(L).

(F) Failure to meet or exceed a standard in a performance agreement under subparagraph (B)(iv) of this paragraph shall require the commissioner to modify the open-enrollment charter to re-

move authority for the additional school under §100.1022 of this title (relating to Standards for Adverse Action on an Open-Enrollment Charter).

(7) [~~(6)~~] Delegation amendment. A delegation amendment is a substantive amendment that permits a charter holder to delegate, pursuant to §100.1101(c) of this title (relating to Delegation of Powers and Duties), the powers or duties of the governing body of the charter holder to any other person or entity.

(A) The commissioner may approve a delegation amendment only if:

(i) the charter holder meets all requirements applicable to delegation amendments and substantive amendments generally;

(ii) the amendment complies with all requirements of Division 5 of this title (relating to Charter School Governance); and

(iii) the commissioner determines that the amendment is in the best interest of the students enrolled in the charter school.

(B) The commissioner may grant the amendment without condition or may require compliance with such conditions and/or requirements as may be in the best interest of the students enrolled in the charter school.

(C) The following powers and duties must generally be exercised by the governing body of the charter holder itself, acting as a body corporate in meetings posted in compliance with Government Code, Chapter 551. Absent a specific written exception of this subparagraph, setting forth good cause why a specific function listed in clauses (i) - (vi) of this subparagraph cannot reasonably be carried out by the charter holder governing body, the commissioner may not grant an amendment delegating such functions to any person or entity through a contract for management services or otherwise. An amendment that is not authorized by such a specific written exception is not effective for any purpose. Absent such exception, the governing body of the charter holder shall not delegate:

(i) final authority to hear or decide employee grievances, citizen complaints, or parental concerns;

(ii) final authority to adopt or amend the budget of the charter holder or the charter school, or to authorize the expenditure or obligation of state funds or the use of public property;

(iii) final authority to direct the disposition or safekeeping of public records; except that the governing body may delegate this function to any person, subject to the governing body's superior right of immediate access to, control over, and possession of such records;

(iv) final authority to adopt policies governing charter school operations;

(v) final authority to approve audit reports under TEC, §44.008(d); or

(vi) initial or final authority to select, employ, direct, evaluate, renew, non-renew, terminate, or set compensation for a chief executive officer.

(D) The following powers and duties must generally be exercised by the chief executive officer of the charter holder. Absent a specific written exception of this subparagraph, setting forth good cause why a specific function listed in clauses (i) - (iii) of this subparagraph cannot reasonably be carried out by the chief executive officer of the charter holder, the commissioner may not grant an amendment permitting the chief executive officer to delegate such function through a contract for management services or otherwise. An amendment that is not authorized by such a specific written exception is not effective for any purpose. Absent such exception, the chief executive officer of the charter holder shall not delegate final authority:

(i) to organize the charter school's central administration;

(ii) to approve reports or data submissions required by law; or

(iii) to select charter school employees or officers.

(d) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on December 19, 2008.

TRD-200806637
Cristina De La Fuente-Valadez
Director, Policy Coordinator
Texas Education Agency
Earliest possible date of adoption: February 1, 2009
For further information, please call: (512) 475-1497

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TITLE 22. EXAMINING BOARDS

PART 3. TEXAS BOARD OF CHIROPRACTIC EXAMINERS

CHAPTER 75. RULES OF PRACTICE

22 TAC §75.17

The Texas Board of Chiropractic Examiners (Board) proposes an amendment to §75.17, relating to scope of practice, to establish that manipulation under anesthesia (MUA) is within the scope of practice of chiropractic in Texas. When the Board first adopted this section, the Board specifically reserved its decision on MUA in order to resolve questions regarding its status under the Chiropractic Act, Texas Occupations Code Chapter 201. See the June 2, 2006, issue of the *Texas Register* (31 TexReg 4613).

MUA is a noninvasive procedure that involves the manipulation of the musculoskeletal system while a patient is under a general anesthesia. MUA is usually performed in either a hospital or a surgical center and is conducted as a cooperative procedure in which a licensee works with an anesthesiologist and additional medical staff. MUA has been part of the practice of chiropractic in Texas for more than 25 years, and the Board has not received any complaints regarding the practice of MUA.

The Chiropractic Act provides that a person practices chiropractic if they "perform [] nonsurgical, nonincisive procedures, including adjustment and manipulation, to improve the subluxation complex or the biomechanics of the musculoskeletal system." (Texas Occupations Code §201.002(b)(2)). The Act also provides that the Board may not require additional training or certify chiropractors to perform MUA (Texas Occupations Code §201.154; see §201.1525(3)).

The status of whether MUA remains within the scope of practice of chiropractic in Texas, however, has been in dispute. Under the Chiropractic Act, "surgical procedure" is defined as includ-

ing "a procedure described in the surgery section of the common procedure coding system as adopted by the Centers for Medicare and Medicaid Services of the United States Department of Health and Human Services." (Texas Occupations Code §201.002(a)(4)). As discussed in the preamble for the original adoption of this section, the Centers for Medicare and Medicaid Services (CMS) have not adopted a coding system of their own but instead have incorporated by reference the American Medical Association's (AMA's) Current Procedural Terminology (CPT) Codebook (31 TexReg 4614). The Board has clarified this by setting forth a definition for "CPT Codebook" that references use of the CPT Codebook by CMS. MUA is listed in the surgery section of the 2004 CPT Codebook in reference to manipulation of the spine (code 22505), shoulder joint (23700), hip joint (27275), knee joint (27570), and ankle (27860). AMA, CPT Terminology 78, 85, 100, 103, and 106 (2004).

Thus, there is an apparent conflict between the Chiropractic Act's authorization for licensees to perform manipulations and the limitation of the Board's ability to certify MUA practitioners with the AMA's identification of MUA as a surgical procedure. However, the Legislature has also provided that an entire statute is intended to be effective (Code Construction Act, Texas Government Code §311.021(2)). Where there is a conflict between a general provision and a special or local provision, "the provisions shall be construed, if possible, so that effect is given to both," but "[i]f the conflict between the general provision and the special or local provision is irreconcilable, the special or local provision prevails as an exception to the general provision, unless the general provision is the later enactment and the manifest intent is that the general provision prevail." (Texas Government Code §311.026). The limitation on the certification of MUA practitioners under §201.154 of the Chiropractic Act is a special provision. The definition of "surgical procedure" under §201.002(a)(3) is a general provision. In order to give effect to the entire Chiropractic Act, the special provision for MUA in §201.154 must be read as an exception to the Act's definition of "surgical procedure." Consequently, MUA is not a surgical procedure prohibited under the Act, and MUA is within the scope of practice of chiropractic in Texas.

Glenn Parker, Executive Director, has determined that for the first five-year period this amendment is in effect there will be no additional cost to state or local governments as a result of enforcing or administering the new section.

Mr. Parker also determined the for each year of the first five-year period the amendment is in effect the public benefit will be determination that MUA is part of the practice of chiropractic in Texas. Mr. Parker has determined that this amendment will not have an adverse economic effect on the licensees that practice MUA. There will be no cost to small businesses, micro-businesses or individuals.

Comments on the proposed amendment may be submitted to Glenn Parker, Executive Director, Texas State Board of Chiropractic Examiners, 333 Guadalupe Street, Tower III, Suite 825, Austin, Texas 78701, (512) 305-6705 fax, no later than 30 days from the date that this amendment is published in the *Texas Register*.

The amendment is proposed under the Texas Occupations Code, §201.152, relating to rules, which authorizes the Board to adopt rules necessary to regulate the practice of chiropractic; and §201.1525, relating to rules clarifying scope of practice of chiropractic.

No other statutes, articles, or codes are affected by the proposed rule.

§75.17. Scope of Practice.

(a) - (d) (No change.)

(e) Treatment Procedures and Services

(1) (No change.)

(2) In order to provide therapeutic care for a patient or patient population, licensees are authorized to use:

(A) - (N) (No change.)

(O) manipulation under anesthesia;

(P) [~~(O)~~] referral of patients to other doctors and health care providers; and

(Q) [~~(P)~~] other treatment procedures and services consistent with the practice of chiropractic.

(3) (No change.)

(f) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on December 19, 2008.

TRD-200806627
Glenn Parker
Executive Director
Texas Board of Chiropractic Examiners
Earliest possible date of adoption: February 1, 2009
For further information, please call: (512) 305-6901

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22 TAC §75.21

The Texas Board of Chiropractic Examiners (Board) proposes new §75.21, relating to acupuncture, to set forth the minimal acceptable qualifications, and procedures for the practice of acupuncture by licensed doctors of chiropractic. In drafting this rule, the Board consulted the rules of the chiropractic licensing boards of Colorado, Florida, and Missouri, in addition to other sources.

Acupuncture has long been part of the practice of chiropractic, and the practice of acupuncture by chiropractors has been authorized since the Legislature amended the Acupuncture Act in 1997 to allow chiropractors and other health care practitioners to practice acupuncture when they are acting within the scope of their licenses (See Texas Occupations Code, §205.003). Post-graduate training in acupuncture is offered by the chiropractic colleges, and the National Board of Chiropractic Examiners offers a national standardized certification examination in acupuncture, in addition to the 4,500 didactic and clinical hours required for licensure (See http://www.nbce.org/written/desc-acu.html). The Board has not received complaints regarding the practice of acupuncture by a chiropractor.

The Board has previously determined that acupuncture is within the scope of practice of chiropractic in Texas (See 22 TAC §75.17, relating to scope of practice). The practice of acupuncture by a chiropractor is both authorized and limited by the Chiropractic Act (See Texas Occupations Code §201.002(b)).

The Board's existing rule regarding proper diligence and efficient practice of chiropractic, 22 TAC §75.2, requires that a chiropractor not perform or attempt to perform procedures in which the chiropractor is untrained by education or experience.

Section 75.21(a) would provide a definition for acupuncture and the related practices of acupressure and meridian therapy. Subsection (b) would establish that a licensee must have the equivalent of one-hundred (100) hours of training in acupuncture by one of three means. Subsection (c) would provide for the grandfathering of existing licensees, that are in good standing with the Board and other jurisdictions where they are licensed, by allowing licensees to receive a credit of twenty hours of training in acupuncture for each year of practice. Thus, a licensee that has been practicing for at least five years would be able to meet the requirement for 100 hours of training. Subsection (d) would require that, beginning on January 1, 2010, applicants for licensure must successfully complete the national standardized certification examination in acupuncture offered by the National Board of Chiropractic Examiners.

Glenn Parker, Executive Director of the Texas Board of Chiropractic Examiners, has determined that for each year of the first five years that this rule will be in effect there will be no additional cost to state or local governments.

Mr. Parker has also determined that for each year of the first five years that this rule will be in effect that the public benefit of this rule will be clearer standards for the use of acupuncture as part of the practice of chiropractic. Mr. Parker has also determined that there will be no costs or adverse economic effects to small or micro businesses during the first five years that this rule will be in effect. Because there is no adverse economic effect, an economic impact statement and regulatory flexibility analysis is not required. Beginning on January 1, 2010 new applicants who wish to incorporate acupuncture into their chiropractic practice would be required to prove that they had passed the acupuncture examination given by the National Board of Chiropractic Examiners (NBCE). Each applicant would pay an acupuncture examination fee to NBCE.

Comments on the proposed new rule may be submitted to Glenn Parker, Executive Director, Texas State Board of Chiropractic Examiners 333 Guadalupe Street, Tower III, Suite 825, Austin, Texas 78701, (512) 305-6705 fax, no later than 30 days from the date that the new rule is published in the *Texas Register*.

The new rule is proposed under Texas Occupations Code, §201.152, relating to rules, and §201.1525, relating to rules clarifying scope of chiropractic. Section 201.152 authorizes the Board to adopt rules necessary to regulate the practice of chiropractic. Section 201.1525 authorizes the Board to adopt rules requiring a license holder to obtain additional training or certification to perform certain procedures or use certain equipment.

No other statutes, articles, or codes are affected by the proposed rule.

§75.21. Acupuncture.

(a) Acupuncture, and the related practices of acupressure and meridian therapy, includes methods for diagnosing and treating a patient by stimulating specific points on or within the musculoskeletal system by various means, including, but not limited to, manipulation, heat, cold, pressure, vibration, ultrasound, light electrocurrent, and short-needle insertion for the purpose of obtaining a biopositive reflex response by nerve stimulation.

(b) In order to practice acupuncture, a licensee shall either:

(1) successfully complete at least one-hundred (100) hours training in undergraduate or post-graduate classes in the use and administration of acupuncture provided by a bona fide reputable chiropractic school or by an acupuncture school approved by the Texas State Board of Acupuncture Examiners;

(2) successfully complete the national standardized certification examination in acupuncture offered by the National Board of Chiropractic Examiners; or

(3) successfully complete at least one-hundred (100) hours training in the use and administration of acupuncture in a course of study approved by the board.

(c) Existing licensees that have been practicing acupuncture, that are in good standing with the Texas Board of Chiropractic Examiners and other jurisdictions where they are licensed, may meet the requirements of subsection (b) of this section by counting each year of practice as twenty hours of training in the use and administration of acupuncture.

(d) Beginning on January 1, 2010, an applicant for licensure must successfully complete the national standardized certification examination in acupuncture offered by the National Board of Chiropractic Examiners in order to practice licensure. This requirement will supersede the provisions of subsection (b) of this section.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on December 19, 2008.

TRD-200806628
Glenn Parker
Executive Director
Texas Board of Chiropractic Examiners
Earliest possible date of adoption: February 1, 2009
For further information, please call: (512) 305-6901

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CHAPTER 80. PROFESSIONAL CONDUCT

22 TAC §80.5

The Texas Board of Chiropractic Examiners (Board) proposes an amendment to §80.5, relating to maintenance of chiropractic records, to provide clearer standards for the contents of chiropractic records. The Board's Enforcement Committee has frequently reviewed patient and billing records from licensees that include only minimal or sparse information regarding their examination and treatment of a patient.

In drafting this rule, the Board reviewed similar rules that have been developed by the chiropractic licensing boards of California, Colorado, Florida, Kansas, Missouri, and New York and other guidelines for documenting patient care.

Glenn Parker, Executive Director, has determined that for the first five-year period this amendment is in effect there will be no additional cost to state or local governments as a result of enforcing or administering the amended section.

Mr. Parker also determined the for each year of the first five-year period the amendment is in effect the public benefit will be clearer standards for the maintenance of patient records. Mr. Parker

has determined that this amendment will not have an adverse economic impact on licensees. There will be no impact on small or micro businesses other than owners of chiropractic clinics.

Comments on the proposed amendment may be submitted to Glenn Parker, Executive Director, Texas State Board of Chiropractic Examiners, 333 Guadalupe Street, Tower III, Suite 825, Austin, Texas 78701, (512) 305-6705 fax, no later than 30 days from the date that this amendment is published in the *Texas Register*.

The amendment is proposed under the Texas Occupations Code, §201.152, relating to rules, which authorizes the Board to adopt rules necessary to regulate the practice of chiropractic.

No other statutes, articles, or codes are affected by the proposed amendment.

§80.5. Maintenance of Chiropractic Records.

(a) An adequate chiropractic record, as described in this section, for each patient shall be maintained for a minimum of six years from the anniversary date of the date of last treatment.

(b) - (e) (No change.)

(f) Licensees shall maintain patient and billing records in a manner consistent with the protection and welfare of the patient. A licensee's patient records shall support all diagnoses, treatments, and billing. Records shall be timely, dated, accurate, signed or initialed by the licensee or the person providing treatment, and legible. Electronic signatures are acceptable.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on December 19, 2008.

TRD-200806630
Glenn Parker
Executive Director
Texas Board of Chiropractic Examiners
Earliest possible date of adoption: February 1, 2009
For further information, please call: (512) 305-6901

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PART 18. TEXAS STATE BOARD OF PODIATRIC MEDICAL EXAMINERS

CHAPTER 375. CONDUCT AND SCOPE OF PRACTICE

22 TAC §375.1

The Texas State Board of Podiatric Medical Examiners proposes changes to §375.1 regarding Definitions. The changes to §375.1 are being proposed to remove the definition of foot which is currently found at paragraph (2). The board has determined that the practice of podiatry can be addressed by other sections of the rules, including §375.3, without the need for the Board to define the term "foot" at this time.

Hemant Makan, Executive Director, has determined that for each year for the first five years the rule is effective, there will be no fiscal implications for state or local government as a result of enforcing or administering the rule.

Mr. Makan has also determined that for each year for the first five years the rule is in effect, the public benefit anticipated as a result of adopting the changes for §375.1 will be a better understanding of the practice of podiatry and its scope, including its limitations. There will be no cost to small businesses, micro-businesses or individuals.

Comments on or about the proposed changes may be submitted in writing within the 30 days after this notice of proposed amendment appears in the *Texas Register* to Janie Alonzo, Staff Services Officer V, Texas State Board of Podiatric Medical Examiners, P.O. Box 12216, Austin, Texas 78711-2216, janie.alonzo@foot.state.tx.us.

The changes are being proposed under Texas Occupations Code, §202.151, which provides the Texas State Board of Podiatric Medical Examiners with the authority to adopt reasonable or necessary rules and bylaws consistent with the law regulating the practice of podiatry, the laws of this state, and the law of the United States to govern its proceedings and activities, the regulation of the practice of podiatry and the enforcement of the law regulating the practice of podiatry.

The proposed changes for §375.1 implement Texas Occupations Code §202.001(a)(4).

§375.1. Definitions.

The following words and terms, when used in this chapter, shall have the following meanings, unless the context indicates otherwise:

(1) *Board*--The Texas State Board of Podiatric Medical Examiners.

~~[(2) *Foot*--The foot is the tibia and fibula in their articulation with the talus, and all bones to the toes, inclusive of all soft tissues (muscles, nerves, vascular structures, tendons, ligaments and any other anatomical structures) that insert into the tibia and fibula in their articulation with the talus and all bones to the toes.]~~

(2) [~~(3)~~] *Medical Records*--Any records, reports, notes, charts, x-rays, or statements pertaining to the history, diagnosis, evaluation, treatment or prognosis of the patient including copes of medical records of other health care practitioners contained in the records of the podiatric physician to whom a request for release of records has been made.

(3) [~~(4)~~] *Office*--In the singular, includes the plural.

(4) [~~(5)~~] *Public communication*--Any written, printed, visual, or oral statement or other communication made or distributed, or intended for distribution, to a member of the general public or the general public at large.

(5) [~~(6)~~] *Solicitation*--A private communication to a person concerning the performance of a podiatric service for such person.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on December 18, 2008.

TRD-200806585
Janie Alonzo
Staff Services Officer V
Texas State Board of Podiatric Medical Examiners
Earliest possible date of adoption: February 1, 2009
For further information, please call: (512) 305-7000

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22 TAC §375.3

The Texas State Board of Podiatric Medical Examiners proposes the changes to §375.3 regarding General. The changes to §375.3 are being proposed to address the practice of podiatry and to clarify its scope, including its limitations.

Hemant Makan, Executive Director, has determined that for each year for the first five years the rule is effective, there will be no fiscal implications for state or local government as a result of enforcing or administering the rule.

Mr. Makan has also determined that for each year for the first five years the rules are in effect, the public benefit anticipated as a result of adopting the changes for §375.3 will be to address the practice of podiatry and to clarify its scope, including its limitations. There will be no cost to small businesses, micro-businesses or individuals.

Comments on or about the proposed changes may be submitted in writing, within the 30 days following the publication of this notice of proposed amendment in the *Texas Register* to Janie Alonzo, Staff Services Officer V, Texas State Board of Podiatric Medical Examiners, P.O. Box 12216, Austin, Texas 78711-2216, janie.alonzo@foot.state.tx.us.

The changes are being proposed under Texas Occupations Code, §202.151, which provides the Texas State Board of Podiatric Medical Examiners with the authority to adopt reasonable or necessary rules and bylaws consistent with the law regulating the practice of podiatry, the laws of this state, and the law of the United States to govern its proceedings and activities, the regulation of the practice of podiatry and the enforcement of the law regulating the practice of podiatry.

The proposed change for §375.3 implements Texas Occupations Code §202.001(a)(4) and Texas Health and Safety Code §241.101.

§375.3. General.

(a) - (b) (No change.)

(c) A licensed podiatric physician may treat that portion of the body at or below the ankle by any system or method.

(d) The intent §375.3(c) is to clarify that treatment may include surgical and non-surgical procedures performed on soft tissue structures distal to the tibial tuberosity that affect the foot and ankle.

(e) The intent of §375.3(c) is to clarify that this includes fractures that extend into the ankle joint.

(f) Surgical treatment of the ankle and their governing and related structures distal to the tibial tuberosity by a podiatric physician shall be performed only in a licensed acute care hospital or a licensed ambulatory surgical center.

(g) A licensed podiatric physician may perform all surgical procedures at a hospital or surgical facility that are within the scope of practice for podiatric medicine in the State of Texas as long as the podiatric physician is credentialed by the hospital or surgical facility to do so. The Texas State Board Podiatric Medical Examiners recommends individual privileging commensurate with an individual practitioner's level of experience, training or board certification/board eligibility.

(h) In recognition of proper practice for public safety, a podiatric physician shall provide adequate and appropriate services consistent with best medical practices, community standards and the law applicable to the practice of podiatric medicine, including the rules of the Board. The podiatric physician shall maintain objectivity, shall respect each individual's dignity and shall always act with integrity in providing services.

(i) The podiatric physician shall recognize his or her individual limitations of ability and shall not offer services outside the scope of practice, qualifications and training or use techniques that exceed individual professional competence. The podiatric physician shall not make any claim, directly or by implication, of possessing professional qualifications or affiliations that have not been attained or that are not currently possessed.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on December 18, 2008.

TRD-200806586
Janie Alonzo
Staff Services Officer V
Texas State Board of Podiatric Medical Examiners
Earliest possible date of adoption: February 1, 2009
For further information, please call: (512) 305-7000

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PART 23. TEXAS REAL ESTATE COMMISSION

CHAPTER 535. GENERAL PROVISIONS

SUBCHAPTER F. EDUCATION, EXPERIENCE, EDUCATIONAL PROGRAMS, TIME PERIODS AND TYPE OF LICENSE

22 TAC §535.64

The Texas Real Estate Commission (TREC) proposes amendments to §535.64, concerning Accreditation of Schools and Approval of Courses and Instructors, and proposes to adopt by reference a revised course application form. Form ED 3-1, Course Application, has been revised to obtain additional information regarding the type of course, the provider's contact information, the delivery format, a sample course completion certificate, approval from the Distance Learning Certification Center for online courses, and a permission letter for courses using another provider's materials. The amendments also update a reference to Form ED 7-1, Instructor Manual Guidelines, which erroneously referred to an outdated version of the form, and a reference to the instructor approval requirements, which was not updated when the lettering of the subsections changed at the time of previous amendments to the section.

Devon V. Bijansky, Assistant General Counsel, has determined that for the first five-year period the amendments are in effect, there will be no fiscal implications for state or local governments as a result of enforcing or administering the amendments. There is no anticipated economic cost to persons who are required to comply with the amendments as proposed. There is no anticipated impact on small businesses, micro-businesses, or local or state employment as a result of implementing the proposed amendments.

Ms. Bijansky also has determined that for each year of the first five years the section as proposed is in effect the public benefit anticipated as a result of enforcing the section will be greater efficiency for agency staff as well as applicants because of reduced need to request follow-up materials.

Comments on the proposed rule may be submitted to Devon V. Bijansky, Assistant General Counsel, Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711-2188.

The amendments are proposed under Texas Occupations Code, §1101.151, which authorizes the Texas Real Estate Commission to make and enforce all rules and regulations necessary for the performance of its duties and to establish standards of conduct and ethics for its licensees in keeping with the purpose and intent of the Act to ensure compliance with the provisions of the Act.

The statute affected by the proposed amendments is Texas Occupations Code, Chapter 1101. No other statute, code or article is affected by the proposed amendments.

§535.64. Accreditation of Schools and Approval of Courses and Instructors.

(a) - (f) (No change.)

(g) Forms. The Texas Real Estate Commission adopts by reference the following forms approved by the commission. These documents are published by and available from the Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711-2188, www.trec.state.tx.us.

(1) - (2) (No change.)

(3) Form ED 3-1 [~~0~~], Course Application;

(4) - (7) (No change.)

(h) Obtaining approval to offer course. An applicant shall submit Form ED 3-1 [~~0~~] the first time approval is sought to offer a course. Once a course has been approved, no further approval is required for another accredited school to offer the same course. Prior to advertising or offering the course, however, the subsequent provider shall complete Form ED 3-1 [~~0~~], file the form with the commission and receive written or oral acknowledgment from the commission that all necessary documentation has been filed. A school shall submit an instructor's manual for each proposed course. The commission may require a copy of the course materials and instructor's manual to be submitted for each previously approved course the school intends to offer. Subsequent providers shall offer the course as originally approved or as revised with the approval of the commission and shall use all materials required in the original or revised course. Each manual must comply with Form ED 7-1 [~~0~~], Instructor Manual Guidelines. Schools may offer a course using an alternative delivery method such as computers if the course satisfies the requirements for such a course contained in §535.62(d)(6) of this chapter.

(i) - (k) (No change.)

(l) Disapproval of application. The commission may disapprove an application for approval of an instructor for failure to meet the standard imposed by subsection (i) [~~(g)~~] of this section, failure to satisfy the commission as to the applicant's honesty, trustworthiness or integrity, or for any reason which would be a ground to suspend or revoke a real estate license. If an application is disapproved, the commission shall provide written notice to the applicant detailing the basis of the decision. An applicant may request a hearing before the commission by filing a written request for hearing within 10 days following the applicant's receipt of the notice of disapproval. Venue for any hearing conducted under this section is in Travis County. Appeals from application disapprovals will be conducted in the manner required by the Act, §1101.364. Hearings are subject to the Administrative Procedure Act, Texas Government Code, Chapter 2001, and to Chapter 533 of this title (relating to Practice and Procedure).

(m) - (o) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on December 18, 2008.

TRD-200806561
Devon V. Bijansky
Assistant General Counsel
Texas Real Estate Commission
Earliest possible date of adoption: February 1, 2009
For further information, please call: (512) 465-3900

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PART 29. TEXAS BOARD OF PROFESSIONAL LAND SURVEYING

CHAPTER 661. GENERAL RULES OF PROCEDURES AND PRACTICES

SUBCHAPTER D. APPLICATIONS, EXAMINATIONS, AND LICENSING

22 TAC §661.56

The Texas Board of Professional Land Surveying (TBPLS) proposes an amendment to §661.56, concerning firm registration renewal and expiration.

The amendment will clarify the date when the firm registration will expire.

Sandy Smith, Executive Director, has determined that for the first five year period the rule is in effect there will be no fiscal impact to state or local government as a result of enforcing or administering this amendment.

Ms. Smith has also determined that for each year of the first five years the rule is in effect the public will benefit from the rule because it will make the certificate of registration expiration date clearer.

There will be no effect on small or micro businesses that are in compliance with the Board's Act and Rules. There are no anticipated costs to those who are required to comply with the rule as proposed.

Comments on the proposed amendment may be submitted in writing to Sandy Smith, Executive Director, Texas Board of Professional Land Surveying, 12100 Park 35 Circle, Building A, Suite 156, Austin, Texas 78753. Comments may also be faxed to Ms. Smith at the Board at (512) 239-5253 or may be sent electronically to ssmith@txls.state.tx.us. All requests for a public hearing on the proposed section submitted under the Administrative Procedure Act must be received by the Executive Director not more than 15 calendar days after notice of a proposed change in the section has been published in the *Texas Register*.

The amendment is proposed pursuant to §1071.151, Title 6, Occupations Code, Subtitle C, which authorizes the Board to adopt and enforce reasonable and necessary rules to perform its duties.

The proposed amendment implements the Texas Administrative Code, Title 22, Part 29, General Rules of Procedures and Practices.

§661.56. Surveying Firms Renewal and Expiration.

(a) The certificate of registration shall be valid until December 31 of the year registered [~~the last day of the twelfth month following the date of issuance of the certificate of registration~~]. At least one month in advance of the date of the expiration, the Board shall notify each firm holding a certificate of registration of the date of the expiration and the amount of the fee that shall be required for its renewal for one year. The renewal notice shall be mailed to the last address provided by the firm to the Board. The certificate of registration may be renewed by completing the renewal application and paying the annual registration renewal fee set by the Board. It is the sole responsibility of the firm to pay the required renewal fee prior to the expiration date, regardless of whether the renewal notice is received.

(b) - (d) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on December 16, 2008.

TRD-200806530
Sandy Smith
Executive Director
Texas Board of Professional Land Surveying
Earliest possible date of adoption: February 1, 2009
For further information, please call: (512) 239-5263

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TITLE 28. INSURANCE

PART 1. TEXAS DEPARTMENT OF INSURANCE

CHAPTER 7. CORPORATE AND FINANCIAL REGULATION

SUBCHAPTER A. EXAMINATION AND FINANCIAL ANALYSIS

28 TAC §7.65

(Editor's note: The text of the following section proposed for repeal will not be published. The section may be examined in the offices of the Texas Department of Insurance or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The Texas Department of Insurance proposes the repeal of §7.65, concerning the requirements for filing the 2002 quarterly and annual statements, other reporting forms, and electronic data filings with the National Association of Insurance Commissioners (NAIC). The section is proposed for repeal because the Department is proposing a new §7.65 to specify the requirements for filing the 2008 annual statements, the 2009 quarterly statements, other reporting forms, and electronic data filings with the Department and the NAIC. The proposed new §7.65 is also published in this issue of the *Texas Register*.

FISCAL NOTE. Danny Saenz, Senior Associate Commissioner, Financial Program, has determined that, for the first five years the repeal of the section will be in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering the repeal, and there will be no effect on local employment or local economy as result of the proposal.

PUBLIC BENEFIT/COST NOTE. Mr. Saenz also has determined that, for each year of the first five years the repeal of the section will be in effect, the public benefit anticipated as a result of the repeal will be the elimination of obsolete regulations. There will be no economic cost to any individuals, or insurers or other Department regulated entities, regardless of size, as a result of the proposed repeal.

ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS FOR SMALL AND MICRO BUSINESSES. In accordance with the Government Code §2006.002(c), the Department has determined that this proposed repeal will not have an adverse economic effect on small or micro business carriers because it is simply the repeal of obsolete rules. Therefore, in accordance with the Government Code §2006.002(c), the Department is not required to prepare a regulatory flexibility analysis.

TAKINGS IMPACT ASSESSMENT. The Department has determined that no private real property interests are affected by this proposal and that this proposal does not restrict or limit an owner's right to property that would otherwise exist in the absence of government action and, therefore, does not constitute a taking or require a takings impact assessment under the Government Code §2007.043.

REQUEST FOR PUBLIC COMMENT. To be considered, written comments on the proposal must be submitted no later than 5:00 p.m. on February 2, 2009 to Gene C. Jarmon, General Counsel and Chief Clerk, Mail Code 113-2A, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104. An additional copy of the comments should be simultaneously submitted to Danny Saenz, Senior Associate Commissioner, Financial Program, Mail Code 305-2A, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104. Any request for a public hearing should be submitted separately to the Office of the Chief Clerk before the close of the public comment period. If a hearing is held, oral and written comments presented at the hearing will be considered.

STATUTORY AUTHORITY. The repeal of the section is proposed under the Insurance Code §§802.001 - 802.003, 802.051 - 802.056, and 36.001. Sections 802.001 - 802.003 and 802.051 - 802.056 authorize the Commissioner to make changes in the forms of the annual statements required of insurance companies of any kind, as shall seem best adapted to elicit a true exhibit of their condition and methods of transacting business. Section 36.001 provides that the Commissioner of Insurance may adopt any rules necessary and appropriate to implement the powers and duties of the Texas Department of Insurance under the Insurance Code and other laws of this state.

CROSS REFERENCE TO STATUTE. The following statutes in the Insurance Code are affected by this proposed repeal: Chapters 2201, 2210, and 2211 and §§32.041, 421.001, 802.001 - 802.003, 802.051 - 802.056, 841.255, 842.003, 842.201, 842.202, 843.151, 843.155, 844.001 - 844.005, 844.051 - 844.054, 844.101, 861.254, 861.255, 862.001,

862.003, 882.001, 882.003, 883.002, 883.204, 884.256, 885.401, 885.403 - 885.406, 886.107, 887.009, 887.060, 887.401 - 887.407, 911.001, 911.304, 912.002, 912.201 - 912.203, 912.301, 941.252, 942.201, 961.002, 961.003, 961.052, 961.202, 982.001, 982.002, 982.004, 982.052, 982.101, 982.102, 982.103, 982.104, 982.106, 982.108, 982.110 - 982.112, 982.251 - 982.255, 982.302 - 982.306, 984.153, 984.201, 984.202, 1301.009, 1506.057, 2551.001, and 2551.152.

§7.65. Requirements for Filing the 2002 Quarterly and 2002 Annual Statements, Other Reporting Forms, and Electronic Data Filings with the NAIC.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on December 19, 2008.

TRD-200806635

Gene C. Jarmon

General Counsel and Chief Clerk

Texas Department of Insurance

Earliest possible date of adoption: February 1, 2009

For further information, please call: (512) 463-6327

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28 TAC §7.65

The Texas Department of Insurance proposes new §7.65, concerning requirements for the filing of the 2008 annual statements, the 2009 quarterly statements, other reporting forms, and electronic data filings with the Department and the National Association of Insurance Commissioners (NAIC). The requirements are applicable to insurers, health maintenance organizations (HMOs), nonprofit legal service corporations, Texas Health Insurance Risk Pool, Texas Fair Plan Association and Texas Windstorm Insurance Association. These insurers, HMOs, and other regulated entities are referred to collectively as "carriers" in this proposal. The carriers will file the annual and quarterly statements and other reporting forms with the Department and/or the NAIC as directed in the proposed rules. The reporting forms include the (i) 2008 annual statement blanks, (ii) 2009 quarterly statement blanks, (iii) Schedule SIS, (iv) management discussion and analysis, (v) supplemental compensation exhibit, (vi) overhead assessment exemption form for insurance company examination expenses, (vii) analysis of surplus, (viii) separate accounts, (ix) supplemental information for county mutuals and HMOs, (x) release of contributions, (xi) reserve summary, (xii) inventory of insurance in force, and (xiii) summary of insurance in force. The carriers will use these forms to report their year-end 2008 and the first three quarters of the 2009 calendar year financial condition and business operations and activities. The information provided by the completion of the forms is necessary to allow the Department to monitor the solvency, business activities, and statutory compliance of the carriers. The proposed new section adopts by reference the NAIC 2008 annual statement blanks, the NAIC 2009 quarterly statement blanks, related instructions, and other reporting forms and instructions for reporting the financial condition, business operations and activities of the carriers. The proposed new section also requires the carriers to file such annual and quarterly statements and other reporting forms with the Department and/or the NAIC as directed. The proposed new section also defines terms relevant to the statement blanks and reporting forms and provides the dates by which certain reports are to be filed. Proposed subsection (a) explains the purpose of the section and adopts by reference the forms described in the section. Proposed subsection (b) provides that the term "Texas Edition" refers to the blanks and forms promulgated by the Commissioner. Proposed subsection (c) specifies the hierarchy of laws in the event of a conflict between the Insurance Code, this new section, and other Department regulations and the NAIC instructions specified in the new section. Proposed subsections (d) - (l) describe the forms, instructions and filing requirements for the various types of insurers and other regulated entities. Proposed subsection (m) provides that the Department may request financial reports other than those specified in this section. The forms and instructions are available for inspection in the office of the Financial Analysis Division of the Texas Department of Insurance, William P. Hobby Jr. State Office Building, 333 Guadalupe Street, Tower Number III, Third Floor, Austin, Texas. The NAIC forms and instructions may also be reviewed at www.naic.org. The new section will replace the existing §7.65, which is proposed for repeal and also published in this issue of the *Texas Register.* Existing §7.65 addresses the requirements for the filing of the 2002 quarterly and annual statements.

FISCAL NOTE. Danny Saenz, Senior Associate Commissioner, Financial Program, has determined that, for the first five years the proposed section will be in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering the section. There will be no effect on local employment or the local economy as a result of the proposal.

PUBLIC BENEFIT/COST NOTE. Mr. Saenz also has determined that, for each year of the first five years the proposed section is in effect, the public benefits anticipated as a result of enforcing this section are the ability of the Department to provide financial information to the public and other regulatory bodies as requested, and to monitor the financial condition of insurance companies, health maintenance organizations, and other regulated entities licensed in Texas to better assure financial solvency.

Existing §7.70 of Title 28 of the Texas Administrative Code specifies the requirements for the filing of the 2007 quarterly and 2007 annual statements, the 2008 quarterly statements, other reporting forms, and electronic data filings with the Department and the NAIC. The same requirements in existing §7.70 are also proposed in this proposal for the filing of the 2008 annual statements, the 2009 quarterly statements, other reporting forms, and electronic data filings with the Department and the NAIC. Therefore, the same types of costs that were estimated for compliance with the §7.70 requirements are also estimated for compliance with the requirements in this proposal. The Department does not anticipate any change in these estimated costs from those estimated for compliance with the §7.70 requirements. Therefore, the estimated costs described in this proposal are consistent with the estimated compliance costs for the §7.70 requirements.

The probable economic cost to persons required to comply with the section depends on several factors including the size, type and complexity of the carrier. Each carrier subject to proposed §7.65 is required by statute to provide the Department with various annual reports on its operations.

The Insurance Code §802.055 provides that an insurance company shall pay all costs of preparing and furnishing to the NAIC the information required under the Insurance Code §802.052, including any related filing fees. The reports and forms required by

this proposal generally request information that is already captured or created by the carrier as necessary to its business operations. Therefore, the additional cost involved generally relates to the transfer of that information from the carrier's records to the required report or form. Although not strictly required by the Government Code §2006.002(c), the proposed section contains a number of accommodations that will mitigate the impact of proposed §7.65(d) for certain carriers that, because of their carrier type, are more likely to be small or micro business carriers. Specifically, proposed §7.65(d) provides stipulated premium companies with one additional month to file their annual statements and an additional month to make certain other related filings. Proposed §7.65(e) and (i) authorize a simplified financial statement form for farm mutual insurance companies that write less than $6 million in premium. Proposed §7.65(e) and (i) also do not require farm mutual insurance companies that write less than $6 million in premium to (i) pay NAIC filings fees, (ii) acquire software to prepare financial statement filings with the NAIC, or (iii) file quarterly financial statements with the Department. Proposed §7.65(j) contains the following provisions for statewide mutual assessment associations, local mutual aid associations, mutual burial associations and exempt associations: (i) authorization to file a simplified financial statement form; (ii) exemption from payment of NAIC filings fees; (iii) exemption from the necessity to acquire software to prepare financial statement filings with the NAIC; and (iv) exemption from requirement to file quarterly financial statements with the Department. Under proposed §7.65(k), nonprofit legal service corporations are not required to pay NAIC filings fees or to acquire software to prepare financial statement filings with the NAIC. Under proposed §7.65(l), Mexican casualty insurance companies are not required to pay NAIC filing fees or acquire software to prepare financial statement filings with the NAIC. It is anticipated that a carrier, regardless of size, will utilize employees who are familiar with the records of the carrier and accounting practices in general. Based on information obtained by the Department, such individuals are estimated to be compensated from $17 to $50 per hour. The Department anticipates that larger business carriers, because of the larger size and relatively more complex operations, will take more time to transfer the required information from their records to the financial forms and reports to be adopted by this proposal. The Department also anticipates that large business carriers will likely compensate staff at the higher end of the salary range. Therefore, based on the Department's experience, the overall labor costs for large business carriers to transfer the required information from their records to the required financial forms and reports will generally be more than the overall labor costs for small or micro business carriers. The overall costs to transfer the information from a carrier's records also may vary based upon factors such as the type of carrier (e.g., life, accident and health, or property and casualty), the nature of the risks insured, and the type of software used by the carrier. The cost of software used to prepare the financial statements is approximately $2,000 for a single company. The cost of software may be greater or less depending on the amount charged by the vendor and any extra services that are agreed to between the company and the vendor. The fees associated with each company to file electronically with the NAIC database are estimated to range from $247, for carriers with the smallest premium volume, to $69,428, for carriers with the largest premium volume with a limit for insurer groups of $201,000. The Insurance Code §802.055 requires an insurance company to pay all costs of preparing and furnishing to the NAIC the information required under the Insurance Code §802.052. Therefore, any costs to a carrier for preparing and filing the annual statement results from statutory requirements and not as a result of the adoption, enforcement, or administration of this proposal. The Department anticipates that the cost of compliance as detailed in this Public Benefit/Cost Note will be relatively more significant for carriers licensed in Texas for less than one year. This is due to the additional time required for carrier staff to become familiar with the requirements of this proposal, initial software acquisitions costs, and the need to implement systems to capture the information required to be reflected in the financial statements filed with the Department and the NAIC. Because the Department for many years has routinely required the preparation and filing of substantially similar financial statements, which are also required by this proposal, most of these costs for carriers licensed for one year or more have already been incurred.

ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS FOR SMALL AND MICRO BUSINESSES. In accordance with the Government Code §2006.002(c), the Department has determined that proposed new §7.65 will not have an adverse economic effect on small or micro businesses. As previously stated in the Public Benefit/Cost Note part of this proposal, all of the requirements in existing §7.70, that apply to the most recent annual and quarterly statement filings, are also proposed in this proposal for the filing of the 2008 annual statements, the 2009 quarterly statements, other reporting forms, and electronic data filings with the Department and the NAIC. Therefore, the same types of costs that were identified for compliance by small and micro business carriers for the filings under §7.70 are also identified for small and micro business carriers for compliance with the requirements in this proposal. The Department does not anticipate any change in the estimated costs for this proposal from those estimated for compliance with the §7.70 filing requirements. The Department also does not anticipate any difference in the economic impact on small and micro business carriers from that determined for compliance with the §7.70 filing requirements. Therefore, the Department's economic impact statement and regulatory flexibility analysis for compliance by small and micro businesses with the requirements in this proposal is consistent with the economic impact statement and regulatory flexibility analysis for §7.70.

The Department has determined that this proposal contains several different requirements that must be analyzed in order to determine costs to small and micro business carriers required to comply with this proposal. First, proposed §7.65(a), (d), (e), (f), (g), (h), (i), (j), (k), and (l) require that each carrier provide the Department with financial reports and related information. Second, proposed §7.65(a), (d), (e), (f), (g), and (h) require that each carrier make concurrent filings of their financial statement with the NAIC that results in related filing fees. Third, proposed §7.65(a), (d), (e), (f), (g), and (h) essentially require that each carrier purchase software to prepare its financial statements and make the related filings with the Department and the NAIC. Each carrier is required by statute to provide the Department with various annual reports on its operations. As noted in the Public Benefit/Cost Note portion of the proposal, the Insurance Code §802.055 provides that an insurance company shall pay all costs of preparing and furnishing to the NAIC the information required under the Insurance Code §802.052, including any related filing fees. Therefore, any costs to a carrier for preparing and filing the annual statement results from statutory requirements and not as a result of the adoption, enforcement, or administration of this proposal.

Proposed §7.65(a), (d), (e) - (l); Preparation of Financial Statements. As required by the Government Code §2006.002(c), the Department has determined that approximately 75 to 150 of the carriers specified in proposed §7.65(a) are small or micro business carriers that will be required to comply with the requirements in proposed §7.65(d) and (e) - (l) to prepare financial statements that reflect the carriers' condition and to file these statements with the Department and the NAIC. These small or micro business carriers will incur routine costs associated with completing the financial statements. Also, as required by the Government Code §2006.002(c), the Department has determined that these routine costs will not have an adverse economic effect on the approximately 75 to 150 small or micro business carriers. These routine costs of compliance will vary between large business carriers and small or micro business carriers based upon the carrier's type and size and other factors, including the (i) character of the carrier's assets, (ii) kinds and nature of the risks insured, (iii) type of software used by the carrier to complete its annual statement, and (iv) employee compensation expenses. The Department's cost analysis and resulting estimated routine costs for carriers in the Public Benefit/Cost Note portion of this proposal are equally applicable to small and micro business carriers. As indicated in the Public Benefit/Cost Note analysis, these routine costs will likely be less for small or micro business carriers, primarily because small or micro business carriers will incur less overall labor costs in transferring information from their records to the required financial forms and reports. This results from their smaller size and relatively less complex operations, which will generally require less time to transfer the information from their records to the financial forms and reports required in this proposal. Small or micro business carriers may also incur relatively lower labor costs on a per hour basis because small or micro business carriers will often compensate staff at the lower end of the salary range. Under the Government Code §2006.002(c), before adopting a rule that may have an adverse economic effect on small or micro businesses, an agency is required to prepare in addition to an economic impact statement a regulatory flexibility analysis that includes the agency's consideration of alternative methods of achieving the purpose of the proposed rule. Because the Department has determined that the routine costs to comply with this proposal, i.e., preparing the financial forms and reports, will not have an adverse economic effect on small or micro business carriers, the Department is not required to consider alternative methods of achieving the purpose of these requirements in the proposed rule. Nevertheless and although not strictly required by the Government Code §2006.002(c), the proposal contains several provisions that will mitigate the impact of proposed §7.65 for certain carriers that, because of their carrier type, are more likely to be small or micro business carriers. Specifically, proposed §7.65(d) provides stipulated premium companies with one additional month to file their annual statements than the time required for large business carriers. Proposed §7.65(d) also provides an additional month for stipulated premium companies to make certain other related filings. Proposed §7.65(d) further exempts stipulated premium companies from the requirement that applies to most other life carriers to file quarterly financial statements with the Department if certain conditions are met. Proposed §7.65(e) and (i) authorize a simplified financial statement form for farm mutual insurance companies that write less than $6 million in premium. Unlike the requirements that apply to all other property and casualty carriers, proposed §7.65(e) and (i) do not require that farm mutual insurance companies that write less than $6 million in premium to file quarterly financial statements with the Department. Proposed §7.65(j) authorizes a simplified financial statement form for statewide mutual assessment associations, local mutual aid associations, mutual burial associations, and exempt associations. Unlike the requirements that apply to other life carriers, proposed §7.65(j) does not require that quarterly financial statements be filed with the Department by statewide mutual assessment associations, local mutual aid associations, mutual burial associations or exempt associations. The Department anticipates that the cost of compliance as detailed in the Public Benefit/Cost Note will be relatively more significant for carriers licensed in Texas for less than one year. This is because of the additional time required for the carrier's staff to become familiar with the requirements of the proposal and the need to implement systems to capture the information required to be reflected in the financial statements filed with the Department and the NAIC. Because the Department for many years has routinely required the preparation and filing of substantially similar financial statements, which are also required by the proposal, most of these costs for carriers licensed for one year or more have already been incurred.

Proposed §7.65(a) and (d) - (h); NAIC Filing Fee. As required by the Government Code §2006.002(c), the Department has determined that approximately 50 to 100 of the carriers specified in proposed §7.65(a) are small or micro business carriers that will be required to comply with the requirements in proposed §7.65(d) - (h) to make concurrent financial statement filings with the NAIC. These small or micro business carriers will incur routine costs associated with related filing fees. Also, as required by the Government Code §2006.002(c), the Department has determined that these routine costs will not have an adverse economic effect on the approximately 50 to 100 small or micro business carriers. The Department's cost analysis and resulting estimated costs for carriers to make concurrent financial statement filings with the NAIC in the Public Benefit/Cost Note portion of this proposal are equally applicable to small or micro business carriers. As indicated in the Public Benefit/Cost Note analysis, these costs of compliance will vary between large business carriers and small or micro business carriers based upon the carrier's premium volume. These fees are on a sliding scale basis and will be less for small or micro business carriers that write smaller amounts of premium and greater for large carriers that write larger amounts of premium. These fees are estimated to range from $247, for carriers with the smallest premium volume, to progressively greater amounts for carriers with the largest premium volume. As examples, a carrier with $100,000 in premium will incur a filing fee of $247; a carrier with $6 million in premium will incur a filing fee of $1,444; and a carrier with $4 billion in premium will incur a filing fee of $69,428. In each example, these fees represent approximately .00002 percent of the stated premium amount. Accordingly, these routine costs will be less for small or micro business carriers because of their relatively smaller premium base. Under the Government Code §2006.002(c), before adopting a rule that may have an adverse economic effect on small or micro businesses, an agency is required to prepare in addition to an economic impact statement a regulatory flexibility analysis that includes the agency's consideration of alternative methods of achieving the purpose of the proposed rule. Because the Department has determined that the routine costs to comply with this proposal, i.e., making concurrent filings with the NAIC, will not have an adverse economic effect on small or micro businesses, the Department is not required to consider alternative methods of achieving the purpose of these requirements in the proposed rule. Moreover, the Insurance Code §802.055 requires an insurance company to pay

all costs of preparing and furnishing to the NAIC the information required under the Insurance Code §802.052, including any related filing fees. Accordingly, the cost of preparing and filing the annual statement results from statutory requirements and not as a result of the adoption, enforcement, or administration of this proposal. Nevertheless and although not strictly required by the Government Code §2006.002(c), the proposed section contains a number of provisions that will mitigate the impact of proposed §7.65 for certain carriers that, because of their carrier type, are more likely to be small or micro business carriers. Specifically, proposed §7.65(e) and (i) do not require farm mutual insurance companies that write less than $6 million in premium to pay these filing fees. Proposed §7.65(j) does not require statewide mutual assessment associations, local mutual aid associations, mutual burial associations, and exempt associations to pay these filing fees. Proposed §7.65(k) does not require nonprofit legal service corporations to pay these filing fees. Proposed §7.65(l) does not require Mexican casualty insurance companies to pay these filing fees.

Proposed §7.65(a) and (d) - (h); Software Expenses. As required by the Government Code §2006.002(c), the Department has determined that approximately 50 to 100 of the carriers specified in proposed §7.65(a) are small or micro business carriers that will essentially be required by proposed §7.65(d), (e), (f), (g), and (h) to purchase software to prepare their financial statements and make the related filings with the Department and the NAIC. These small or micro business carriers will incur routine costs associated with purchasing this software. Also, as required by the Government Code §2006.002(c), the Department has determined that these routine costs will not have an adverse economic effect on the approximately 50 to 100 small or micro business carriers. The Department's cost analysis and resulting estimated costs for carriers to purchase this software contained in the Public Benefit/Cost Note portion of this proposal are equally applicable to small or micro business carriers. As indicated in the Public Benefit/Cost Note analysis, these costs of compliance may vary based upon a number of factors. The cost of software to prepare the financial statements is approximately $2,000 for a single company. The cost of software may be greater or less depending on the amount charged by the vendor, the type of software needed and any extra services that are agreed to between the company and the vendor. Under the Government Code §2006.002(c), before adopting a rule that may have an adverse economic effect on small or micro businesses, an agency is required to prepare in addition to an economic impact statement a regulatory flexibility analysis that includes the agency's consideration of alternative methods of achieving the purpose of the proposed rule. Because the Department has determined that the routine costs to comply with this proposal, i.e., purchase software, will not have an adverse economic effect on small or micro business carriers, the Department is not required to consider alternative methods of achieving the purpose of these requirements in the proposed rule. Moreover, each carrier subject to this proposal is required by statute to provide the Department with various annual reports on its operations, and therefore, the related costs result from statutory requirements and not as a result of the adoption, enforcement, or administration of this proposal. Nevertheless and although not strictly required by the Government Code §2006.002(c), the proposed section contains several provisions that will mitigate the impact of proposed §7.65 for certain carriers that, because of their carrier type, are more likely to be small or micro business carriers. Specifically, proposed §7.65(d) exempts stipulated premium companies from the requirement that applies to most other life carriers to file quarterly interim financial statements with the Department if certain conditions are met. This exemption will lessen the software needs of stipulated premium companies. Proposed §7.65(e) and (i) do not require that farm mutual insurance companies that write less than $6 million in premium to acquire this software and thereby incur the related expense. Proposed §7.65(j) does not require statewide mutual assessment associations, local mutual aid associations, mutual burial associations, and exempt associations to acquire this software and thereby incur the related expense. Proposed §7.65(k) does not require that nonprofit legal service corporations to acquire this software and incur the related expense. Proposed §7.65(i) does not require Mexican casualty insurance companies to acquire this software and incur the related expense. The Department anticipates that the cost of compliance as detailed in this Public Benefit/Cost Note part of the proposal will be relatively more significant for carriers licensed in Texas for less than one year because of initial software acquisitions costs. Because the Department for many years has routinely required the preparation and filing of substantially similar financial statements, which are also required by the proposal, most of these software costs for carriers licensed for one year or more have already been incurred.

TAKINGS IMPACT ASSESSMENT. The Department has determined that no private real property interests are affected by this proposal and that this proposal does not restrict or limit an owner's right to property that would otherwise exist in the absence of government action and, therefore, does not constitute a taking or require a takings impact assessment under the Government Code §2007.043.

REQUEST FOR PUBLIC COMMENT. To be considered, written comments on the proposal must be submitted no later than 5:00 p.m. on February 2, 2009, to Gene C. Jarmon, General Counsel and Chief Clerk, Mail Code 113-2A, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104. An additional copy of the comments should be submitted simultaneously to Danny Saenz, Senior Associate Commissioner, Financial Program, Mail Code 305-2A, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104. Any request for a public hearing on the proposal should be submitted separately to the Office of the Chief Clerk before the close of the public comment period. If a hearing is held, oral and written comments presented at the hearing will be considered.

STATUTORY AUTHORITY. The new section is proposed under the Insurance Code §§802.001 - 802.003 and §§802.051 - 802.056, which authorize the Commissioner to make changes in the forms of the annual statements required of insurance companies of any kind, as shall seem best adapted to elicit a true exhibit of their condition and methods of transacting business, and require certain insurers to make filings with the National Association of Insurance Commissioners; Chapters 2201, 2210, and 2211 and §§841.255, 842.003, 842.201, 842.202, 843.151, 843.155, 861.254, 861.255, 862.001, 862.003, 882.001, 882.003, 883.002, 883.204, 884.256, 885.401, 885.403 - 885.406, 887.009, 887.060, 887.401 - 887.407, 911.001, 911.304, 912.002, 912.201 - 912.203, 912.301, 941.252, 942.201, 961.002, 961.003, 961.052, 961.202, 982.004, 982.251 - 982.254, 982.101, 982.103, 984.101 - 984.103, 984.153, 984.201, 984.202, 1301.009, 1506.057, 2551.001, and 2551.152 which require the filing of financial reports and other information by insurers and other regulated entities and provide specific rulemaking authority to the Commissioner relating to those insurers and other regulated entities; §§982.001, 982.002, 982.004, 982.052, 982.102 - 982.104, 982.106, 982.108,

982.110 - 982.112, 982.201 - 982.204, 982.251 - 982.255, and 982.302 - 982.306 which provide the conditions under which foreign insurers are permitted to do business in this state and require foreign insurers to comply with the provisions of the Insurance Code; §§844.001 - 844.005, 844.051 - 844.054, and 844.101 which authorize the Commissioner to adopt rules to implement the regulation of nonprofit health corporations holding a certificate of authority under the Insurance Code, Title 2, Chapter 844; §421.001 which requires insurers to establish adequate reserves and provides for the adoption of each current formula for establishing reserves applicable to each line of insurance; §32.041 which requires the Department to furnish the statement blanks and other reporting forms necessary for companies to comply with the filing requirements; and §36.001 which provides that the Commissioner of Insurance may adopt any rules necessary and appropriate to implement the powers and duties of the Texas Department of Insurance under the Insurance Code and other laws of this state.

CROSS REFERENCE TO STATUTE. The following articles and sections of the Insurance Code will be affected by this proposed section: Chapters 2201, 2210, and 2211 and §§32.041, 421.001, 802.001 - 802.003, 802.051 - 802.056, 841.255, 842.003, 842.201, 842.202, 843.151, 843.155, 844.001 - 844.005, 844.051 - 844.054, 844.101, 861.254, 861.255, 862.001, 862.003, 882.001, 882.003, 883.002, 883.204, 884.256, 885.401, 885.403 - 885.406, 886.107, 887.009, 887.060, 887.401 - 887.407, 911.001, 911.304, 912.002, 912.201 - 912.203, 912.301, 941.252, 942.201, 961.002, 961.003, 961.052, 961.202, 982.001, 982.002, 982.004, 982.052, 982.101, 982.102, 982.103, 982.104, 982.106, 982.108, 982.110 - 982.112, 982.251 - 982.255, 982.302 - 982.306, 984.153, 984.201, 984.202, 1301.009, 1506.057, 2551.001, and 2551.152.

§7.65. Requirements for Filing the 2008 Annual Statements, the 2009 Quarterly Statements, Other Reporting Forms, and Electronic Data Filings with the Texas Department of Insurance and the NAIC.

(a) Scope. This section specifies the requirements for insurers and other regulated entities for filing the 2008 annual statement, the 2009 quarterly statement blanks, other reporting forms, and electronic data filings, with the department and the National Association of Insurance Commissioners (NAIC) necessary to report information concerning the financial condition and business operations and activities of insurers. This section applies to all insurers and certain other regulated entities authorized to do the business of insurance in this state and includes, but is not limited to, life insurers; accident insurers; life and accident insurers; life and health insurers; accident and health insurers; life, accident and health insurers; mutual life insurers; stipulated premium insurers; group hospital service corporations; fire insurers; fire and marine insurers; U.S. branches of alien insurers; Mexican casualty insurers; general casualty insurers; fire and casualty insurers; mutual insurers other than life; statewide mutual assessment companies; local mutual aid associations; mutual burial associations; exempt associations; county mutual insurers; Lloyd's plans; reciprocal and inter-insurance exchanges; domestic risk retention groups; domestic joint underwriting associations; title insurers; fraternal benefit societies; farm mutual insurers; health maintenance organizations; nonprofit health corporations; nonprofit legal services corporations; the Texas Health Insurance Risk Pool; the Texas Mutual Insurance Company; the Texas Windstorm Insurance Association; and the Texas FAIR Plan Association. The commissioner adopts by reference the 2008 annual statement blanks, the 2009 quarterly statement blanks, and the related instruction manuals published by the NAIC, and other supplemental reporting forms specified in this section. The forms are available from the Texas Department of Insurance, Financial Analysis Division, Mail Code 303-1A, P.O. Box 149104, Austin, Texas 78714-9104. The NAIC annual and quarterly statement blanks and other NAIC supplemental reporting forms can be printed or filed electronically using annual statement software available from vendors. Insurers and other regulated entities shall properly report to the department and the NAIC by completing, in accordance with applicable instructions, the appropriate hard copy annual and quarterly statement blanks, other reporting forms, and electronic data filings.

(b) Definition. In this section "Texas Edition" refers to the blanks and forms promulgated by the commissioner.

(c) Conflicts with other laws. In the event of a conflict between the Insurance Code, any currently existing department rule, form, instructions, or any specific requirement of this section and the NAIC instructions listed in this section, the Insurance Code, the department rule, form, instruction, or the specific requirements of this section shall take precedence and in all respects control.

(d) Filing requirements for life, accident and health insurers. Each life; life and accident; life and health; accident; accident and health; mutual life; or life, accident and health insurance company; stipulated premium company; group hospital service corporation; and the Texas Health Insurance Risk Pool shall complete and file the blanks, forms, or electronic data filings as directed in this subsection. This subsection does not apply to entities licensed as health maintenance organizations under the Insurance Code Chapter 843. Insurers specified in this subsection and engaged in business authorized under the Insurance Code Chapter 843 may have additional reporting requirements under subsection (h) of this section. Insurers described under this subsection may elect to file on the 2008 Health Annual Statement for year-end 2008, and on the 2008 Health Quarterly Statement for the three quarters of 2008, if the insurer passes the Health Statement Test as outlined in the "2008 Annual Statement, Health Instructions." If a reporting entity qualifies under this subsection to use the 2008 Health Annual Statement, it must continue to use that annual statement for a minimum of three years or obtain written approval from the department to change to another type of annual statement. Insurers filing the 2008 Life, Accident and Health Annual Statement, the 2008 Life, Accident and Health Quarterly Statements, and the supplemental forms and reports identified in these subsections shall complete filings in accordance with the "2008 Annual Statement Instructions, Life, Accident and Health," and the "2008 Quarterly Statement Instructions, Life, Accident and Health," as applicable. Life insurers meeting the test set forth in this subsection to file the 2008 Health Annual Statement and the supplemental forms and reports identified in these subsections shall complete filings in accordance with the "2008 Annual Statement Instructions, Health," and the "2008 Quarterly Statement Instructions, Health," as applicable. The electronic filings of these forms or reports with the NAIC shall be in accordance with the NAIC data specifications and instructions for electronic filing and shall include PDF format filing. The filings for insurers described in this subsection are as follows:

(1) Domestic insurer reports and forms in paper copy to be filed only with the department as follows:

(A) 2008 Life, Accident and Health Annual Statement, including the printed investment schedule detail, due on or before March 1, 2009 (stipulated premium companies, April 1, 2009);

(B) 2008 Life, Accident and Health Annual Statement of the Separate Accounts for the 2008 calendar year (required of companies maintaining separate accounts), due on or before March 1, 2009;

(C) 2009 Life, Accident and Health Quarterly Statements, due on or before May 15, August 15, and November 15, 2009. A Texas stipulated premium company, unless specifically requested to

do so by the department, is not required to file quarterly data filings with the NAIC if it meets all three of the following conditions:

(i) it is authorized to write only life insurance on its certificate of authority;

(ii) it collected premiums in the prior calendar year of less than $1 million; and

(iii) it had a profit from operations in the prior two calendar years;

(D) 2008 Health Annual Statement, including the printed investment schedule detail, due on or before March 1, 2009 if the company qualifies as described in this subsection;

(E) 2009 Health Quarterly Statements, due on or before May 15, August 15, and November 15, 2009 if the company qualifies as described in this subsection;

(F) All the paper copies of the annual and quarterly supplements prepared and filed on dates specified in the forms and instructions;

(G) Management's Discussion and Analysis, due on or before April 1, 2009;

(H) Statement of Actuarial Opinion, due on or before March 1, 2009 (stipulated premium companies, April 1, 2009). The actuarial opinion shall be prepared in accordance with paragraph (4) of this subsection;

(I) Schedule SIS, due on or before March 1, 2009. This filing is also required if filing a Health Annual Statement, as applicable;

(J) Supplemental Compensation Exhibit, due on or before March 1, 2009 (stipulated premium companies, April 1, 2009). This filing is also required if filing a Health Annual Statement, as applicable;

(K) The Texas Health Insurance Risk Pool shall file the 2008 Health Annual Statement, and the 2009 Quarterly Statements as follows:

(i) 2008 Health Annual Statement with only pages 1 - 6, and Schedule E Part 1, Part 2, and Part 3 to be completed and filed on or before March 1, 2009;

(ii) 2009 Health Quarterly Statements, with only pages 1 - 6, Schedule E, Part 1-Cash, and Part 2 - Cash Equivalents to be completed and filed on or before May 15, August 15, and November 15, 2009; and

(iii) The Texas Health Insurance Risk Pool is not required to file any reports, diskettes, or electronic data filings with the NAIC.

(L) Texas Overhead Assessment Exemption Form (Texas Edition), due on or before March 1, 2009 (stipulated premium companies, April 1, 2009). This form is to be filed only by domestic insurance companies that have qualified pension contracts under the Insurance Code §451.151; otherwise, this form should not be filed; and

(M) Analysis of Surplus (Texas Edition) for life, accident and health insurers, due on or before March 1, 2009 (stipulated premium companies, April 1, 2009).

(2) Foreign companies filing only electronically with the NAIC and not filing a paper copy with the department shall file a signed jurat page with the department in lieu of filing the entire paper filing.

(3) Electronic filings with the NAIC by domestic and foreign insurers:

(A) 2008 Life, Accident and Health Annual Statement electronic filing and PDF filing, due on or before March 1, 2009 (stipulated premium companies, April 1, 2009);

(B) 2008 Life, Accident and Health Annual Statement of the Separate Accounts electronic filing and PDF filing, due on or before March 1, 2009;

(C) 2009 Life, Accident and Health Quarterly Statement electronic filings and PDF filings, due on or before May 15, August 15, and November 15, 2009. A Texas stipulated premium company, unless specifically requested to do so by the department, is not required to file quarterly electronic data filings with the NAIC if it meets all three of the following conditions:

(i) it is authorized to write only life insurance on its certificate of authority;

(ii) it collected premiums in the prior calendar year of less than $1 million; and

(iii) it had a profit from operations in the prior two calendar years.

(D) All annual and quarterly supplemental electronic filings together with the related PDF filings (except for Schedule SIS and Supplemental Compensation Exhibit which are filed by domestic insurers only with the department in paper copy) due on the dates specified in the forms and instructions.

(4) Statement of Actuarial Opinion required by paragraph (1)(H) of this subsection shall be prepared in accordance with the following:

(A) Unless exempted, the Statement of Actuarial Opinion, attached to either the 2008 Life, Accident and Health Annual Statement or the 2008 Health Annual Statement, should follow the applicable provisions of §§3.1601 - 3.1608 of this title (relating to Actuarial Opinion and Memorandum Regulation).

(B) For those companies exempted from §§3.1601 - 3.1608 of this title, instructions 1 - 12, established by the NAIC, must be followed.

(C) Any company required by §3.4505(b)(3)(I) of this title (relating to General Calculation Requirements for Basic Reserves and Premium Deficiency Reserves) to opine on the application of X factors, shall attach this opinion to the 2008 Life, Accident and Health Annual Statement or the 2008 Health Annual Statement, as applicable.

(5) The commissioner reserves the right to request paper copies of any paper or electronic filings made by foreign companies in their state of domicile or the NAIC.

(6) A foreign insurer that is classified as a commercially domiciled insurer under the Insurance Code §823.004 shall file an Analysis of Surplus (Texas Edition) for life, accident and health insurers with the department, on or before March 1, 2009.

(e) Requirements for property and casualty insurers. Each fire, fire and marine, general casualty, fire and casualty, or U.S. branch of an alien insurer, county mutual insurance company, mutual insurance company other than life, Lloyd's plan, reciprocal or inter insurance exchange, domestic risk retention group, life insurance company that is licensed to write workers' compensation, any farm mutual insurance company that filed a property and casualty annual statement for the 2007 calendar year or had gross written premiums in 2008 in excess of $6 million, any Mexican casualty insurance company licensed under the Insurance Code Chapter 984, domestic joint underwriting association, the Texas Mutual Insurance Company, the Texas Windstorm Insurance Association, and the Texas FAIR Plan Association shall com-

plete and file the following blanks, forms, and diskettes or electronic data filings as described in this subsection. The forms and reports identified in this subsection shall be completed in accordance with the "2008 Annual Statement Instructions, Property and Casualty," and the "2009 Quarterly Statement Instructions, Property and Casualty," as applicable. The electronic filings with the NAIC shall be in accordance with the NAIC data specifications and instructions and shall include PDF format filing, as applicable. The filings for insurers described in this subsection are as follows:

(1) Domestic insurer reports and forms in paper copy to be filed only with the department as follows:

(A) 2008 Property and Casualty Annual Statement, due on or before March 1, 2009, including the printed investment schedule detail;

(B) 2009 Property and Casualty Quarterly Statements, due on or before May 15, August 15, and November 15, 2009;

(C) 2008 Combined Property/Casualty Annual Statement, due on or before May 1, 2009. This statement is required only for those affiliated insurers that wrote more than $35 million in direct premiums as a group in calendar year 2008, as disclosed in Schedule T of the Annual Statement(s);

(D) All the paper copies of the annual and quarterly supplements prepared and filed on dates specified in the forms and instructions;

(E) The actuarial opinion submitted shall be prepared in accordance with the "2008 Annual Statement Instructions, Property and Casualty";

(F) Schedule SIS, due on or before March 1, 2009;

(G) Supplemental Compensation Exhibit, due on or before March 1, 2009;

(H) Texas Overhead Assessment Exemption Form (Texas Edition), due on or before March 1, 2009. This form is to be filed only by domestic insurance companies that have qualified pension contracts under the Insurance Code §401.151; otherwise, this form should not be filed;

(I) Texas Supplement for County Mutuals (Texas Edition) (required of Texas county mutual insurance companies only), due on or before March 1, 2009;

(J) Texas Supplemental "A" for County Mutuals (Texas Edition) (required of Texas county mutual insurance companies only), due on or before March 1, 2009;

(K) Analysis of Surplus (Texas Edition) for property and casualty insurers except Texas county mutual insurance companies, due on or before March 1, 2009;

(L) Actuarial Opinion Summary prepared in accordance with §7.9 of this title (relating to Examination of Actuarial Opinion for Property and Casualty Insurers);

(M) The Texas Windstorm Insurance Association shall complete and file the following:

(i) 2008 Property and Casualty Annual Statement, due on or before March 1, 2009;

(ii) 2009 Property and Casualty Quarterly Statements, due on or before May 15, August 15, and November 15, 2009; and

(iii) Management's Discussion and Analysis, due on or before April 1, 2009.

(iv) The Texas Windstorm Insurance Association is not required to file any reports with the NAIC.

(N) The Texas FAIR Plan Association shall complete and file the following:

(i) 2008 Property and Casualty Annual Statement, due on or before March 1, 2009;

(ii) 2009 Property and Casualty Quarterly Statements, due on or before May 15, August 15, and November 15, 2009;

(iii) Statement of Actuarial Opinion, due on or before March 1, 2009;

(iv) Actuarial Opinion Summary prepared in accordance with §7.9 of this title; and

(v) Management's Discussion and Analysis, due on or before April 1, 2009.

(vi) The Texas FAIR Plan Association is not required to file any reports with the NAIC.

(2) Foreign property and casualty insurers filing only electronically with the NAIC and not filing a paper copy with the department shall file a signed jurat page with the department in lieu of filing the entire paper filing.

(3) Electronic filings by domestic and foreign insurers to be filed with the NAIC:

(A) 2008 Property and Casualty Annual Statement electronic filing and PDF filing, due on or before March 1, 2009;

(B) 2009 Property and Casualty Quarterly Statement electronic filings and PDF filings, due on or before May 15, August 15, and November 15, 2009;

(C) All annual and quarterly supplemental electronic filings together with the related PDF filings (except for electronic Schedule SIS and Supplemental Compensation Exhibit, required of domestic insurers only) due on the dates specified in the forms and instructions;

(D) Electronic combined insurance exhibit, due on or before May 1, 2009; and

(E) Combined annual statement electronic filing and PDF filing, due on or before May 1, 2009.

(4) The commissioner reserves the right to request paper copies of any paper or electronic filings made by foreign companies in their state of domicile or the NAIC.

(5) A foreign insurer that files an application with the department for approval of a policyholder dividend shall file an Analysis of Surplus (Texas Edition) for property and casualty insurers with the application.

(6) A foreign insurer that is classified as a commercially domiciled insurer under the Insurance Code §823.004 shall file an Analysis of Surplus (Texas Edition) for property and casualty insurers with the department, on or before March 1, 2009.

(f) Requirements for fraternal benefit societies. Each fraternal benefit society shall complete and file the following blanks, forms, and electronic data filings for the 2008 calendar year, and the first three quarters for the 2009 calendar year. The forms and reports identified in this subsection shall be completed in accordance with the "2008 Annual Statement Instructions, Fraternal," and the "2009 Quarterly Statement Instructions, Fraternal," as applicable. The electronic data filings with the NAIC shall be in accordance with the NAIC data specifications and

instructions and shall include PDF format filing. The filings for insurers described in this subsection are as follows:

(1) Domestic insurer reports and forms in paper copy to be filed only with the department, as follows:

(A) 2008 Fraternal Annual Statement, including the printed investment schedule detail, due on or before March 1, 2009;

(B) 2008 Fraternal Annual Statement of the Separate Accounts (required of companies maintaining separate accounts), due on or before March 1, 2009;

(C) 2009 Fraternal Quarterly Statements, due on or before May 15, August 15, and November 15, 2009;

(D) All the paper copies of the annual and quarterly supplements prepared and filed on dates specified in the forms and instructions;

(E) Management's Discussion and Analysis, due on or before April 1, 2009;

(F) Statement of Actuarial Opinion, due on or before March 1, 2009.

(G) Supplemental Compensation Exhibit, due on or before March 1, 2009;

(H) Texas Overhead Assessment Exemption Form (Texas Edition), due on or before March 1, 2009. This form is to be filed only by domestic insurance companies that have qualified pension contracts under the Insurance Code §401.151; otherwise, this form should not be filed; and

(I) Analysis of Surplus (Texas Edition) for fraternal benefit societies, due on or before March 1, 2009.

(2) Foreign fraternal insurers filing only electronically with the NAIC and not filing a paper copy with the department shall file a signed jurat page with the department in lieu of filing the entire paper filing.

(3) Electronic filings by domestic and foreign insurers to be filed with the NAIC:

(A) 2008 Fraternal Annual Statement electronic filing and PDF filing, due on or before March 1, 2009;

(B) 2008 Fraternal Annual Statement of the Separate Accounts electronic filing and PDF filing, due on or before March 1, 2009;

(C) 2009 Fraternal Quarterly Statement electronic filings and PDF filings, due on or before May 15, August 15, and November 15, 2009; and

(D) All annual and quarterly supplemental electronic filings together with the related PDF filings (except for the Supplemental Compensation Exhibit) due on the dates specified in the forms.

(4) Statement of Actuarial Opinion required by paragraph (1)(F) of this subsection shall be prepared in accordance with the following:

(A) Unless exempted, the Statement of Actuarial Opinion, attached to the 2008 Fraternal Annual Statement, should follow the applicable provisions of §§3.1601 - 3.1608 of this title.

(B) For those companies exempted from §§3.1601 - 3.1608 of this title, instructions 1 - 12, established by the NAIC, must be followed.

(C) Any company required by §3.4505(b)(3)(I) of this title to opine on the application of X factors, shall attach this opinion to the 2008 Fraternal Annual Statement, as applicable.

(5) The commissioner reserves the right to request paper copies of any paper or electronic filings made by foreign companies in their state of domicile or the NAIC.

(6) A foreign insurer that is classified as a commercially domiciled insurer under the Insurance Code §823.004 shall file an Analysis of Surplus (Texas Edition) for fraternal benefit societies with the department on or before March 1, 2009.

(g) Requirements for title insurers. Each title insurance company shall complete and file the following blanks and forms for the 2008 calendar year, and the first three quarters of the 2009 calendar year. The reports and forms identified in this subsection shall be completed in accordance with the "2008 Annual Statement Instructions, Title," and the 2009 Quarterly Statement Instructions, Title," as applicable. The electronic version of the filings with the NAIC identified in this subsection shall be in accordance with the NAIC data specifications and instructions and shall include PDF format filing. The filings for insurers described in this subsection are as follows:

(1) Domestic insurer reports and forms in paper copy to be filed only with the department as follows:

(A) 2008 Title Annual Statement, including printed investment schedule details, due on or before March 1, 2009;

(B) 2009 Title Quarterly Statements, due on or before May 15, August 15, and November 15, 2009;

(C) All the paper copies of the annual and quarterly supplements prepared and filed on dates described in the forms and instructions;

(D) Management's Discussion and Analysis, due on or before April 1, 2009;

(E) Statement of Actuarial Opinion, due on or before March 1, 2009;

(F) Supplemental Compensation Exhibit, due on or before March 1, 2009;

(G) Schedule SIS, due on or before March 1, 2009;

(H) Texas Overhead Assessment Exemption Form (Texas Edition), due on or before March 1, 2009. This form is to be filed only by domestic insurance companies that have qualified pension contracts under the Insurance Code §401.151; otherwise, this form should not be filed; and

(I) Analysis of Surplus (Texas Edition) for title companies, due on or before March 1, 2009.

(2) Foreign companies filing electronically with the NAIC and not filing a paper copy with the department shall file a signed jurat page with the department in lieu of filing the entire paper filing.

(3) Electronic filings with the NAIC by domestic and foreign insurers:

(A) 2008 Title Annual Statement electronic filings and PDF filings, due on or before March 1, 2009;

(B) 2008 Title Quarterly Statement electronic filings and PDF filings, due on or before May 15, August 15, and November 15, 2009;

(C) All annual and quarterly supplemental electronic filings together with the related PDF filings (except for Schedule

SIS and Supplemental Compensation Exhibit which are only filed by domestic insurers with the department in paper copy) due on the dates specified in the forms and instructions;

(D) Management Discussion and Analysis, due on or before April 1, 2009; and

(E) Statement of Actuarial Opinion, due on or before March 1, 2009.

(4) The commissioner reserves the right to request paper copies of any paper or electronic filings made by foreign companies in their state of domicile or the NAIC.

(5) A foreign insurer that is classified as a commercially domiciled insurer under the Insurance Code §823.004 shall file an Analysis of Surplus (Texas Edition) for title insurers on or before March 1, 2009.

(h) Requirements for health maintenance organizations. Each health maintenance organization licensed pursuant to the Insurance Code Chapter 843 shall complete the 2008 Health Annual Statement, and the 2009 Quarterly Statements. Insurers that are subject to life insurance statutes and are permitted or allowed to do the business of health maintenance organizations shall file the Texas HMO supplement forms as part of their annual and quarterly statement filings. The forms and reports required in this subsection shall be completed in accordance with the "2008 Annual Statement Instructions, Health," and the 2009 Quarterly Statement Instructions, Health," as applicable. The Texas supplemental forms required in this subsection and provided by the department shall be completed in accordance with the instructions on the forms. The Statement of Actuarial Opinion shall include the additional requirements of the department set forth in paragraph (1)(D) of this subsection. The electronic data filings with the NAIC shall be in accordance with NAIC data specifications and instructions and shall include PDF format filing. The Texas specific electronic filings regarding HMO data requested by the department shall be filed in accordance with the instructions provided by the department. The filings for insurers described in this subsection are as follows:

(1) Domestic and foreign insurer reports and forms in paper copy to be filed only with the department:

(A) 2008 Health Annual Statement, including printed investment schedule detail, due on or before March 1, 2009;

(B) 2009 Health Quarterly Statements, due on or before May 15, August 15, and November 15, 2009. With each quarterly filing, include an up-to-date and completed Schedule E - Part 3 - Special Deposits, utilizing the format from the 2008 Health Annual Statement;

(C) Management's Discussion and Analysis, due on or before April 1, 2009; and

(D) Statement of Actuarial Opinion, due on or before March 1, 2009. In addition to the requirements set forth in the "2008 Annual Statement Instructions, Health," the department requires that the actuarial opinion include the following:

(i) The Statement of Actuarial Opinion must include assurance that an actuarial report and underlying actuarial work papers supporting the actuarial opinion will be maintained at the company and available for examination for seven years. The foregoing must be available by May 1 of the year following the year end for which the opinion was rendered or within two weeks after a request from the commissioner. The suggested wording used will depend on whether the actuary is employed by the company or is a consulting actuary. The wording for an actuary employed by the company should be similar to the following: "An actuarial report and any underlying actuarial work papers supporting the findings expressed in this Statement of Actuarial Opinion will be retained for a period of seven years in the administrative offices of the company and available for regulatory examination." The wording for a consulting actuary retained by the company should be similar to the following: "An actuarial report and any underlying actuarial work papers supporting the findings expressed in this Statement of Actuarial Opinion have been provided to the company to be retained for a period of seven years in the administrative offices of the company and available for regulatory examination."

(ii) Under the scope paragraph requirements of section 5 of the "2008 Annual Statement Instructions, Health," relating to the Actuarial Certification, the department requires that the actuarial opinion specifically list the premium deficiency reserve as an item and disclose the amount of such reserve.

(2) Domestic insurer reports and forms to be filed with the department:

(A) Supplemental Compensation Exhibit in paper copy only, due on or before March 1, 2009;

(B) Texas Overhead Assessment Exemption Form (Texas Edition) in paper copy only, due on or before March 1, 2009. This form is to be filed only by domestic insurance companies that have qualified pension contracts under the Insurance Code §401.151; otherwise, this form should not be filed;

(C) Texas HMO Supplement Annual (Texas Edition), in paper copy and electronic filing, containing annual data for calendar year 2008, to be completed according to the instructions provided by the department, due on or before March 1, 2009.

(D) Texas HMO Supplement Quarterly (Texas Edition), in paper copy and electronic filings, containing quarterly statement data for calendar-year 2009, to be completed according to the instructions provided by the department, due on or before May 15, August 15, and November 15, 2009.

(3) Electronic filings with the NAIC by domestic and foreign insurers:

(A) 2008 Health Annual Statement electronic filing, and PDF filing, due on or before March 1, 2009;

(B) 2009 Health Quarterly Statement electronic filing and PDF filing, due on or before May 15, August 15, and November 15, 2009;

(C) All annual and quarterly supplemental electronic filings together with the related PDF filings (except for Schedule SIS and Supplemental Compensation Exhibit which are only filed by domestic insurers with the department in paper copy) due on the dates specified in the forms and instructions;

(D) Statement of Actuarial Opinion, due on or before March 1, 2009; and

(E) Management Discussion and Analysis, due on or before April 1, 2009.

(i) Requirements for farm mutual insurers not subject to the provisions of subsection (e) of this section. Farm mutual insurance companies not subject to subsection (e) of this section shall file the following blanks and forms for the 2008 calendar year with the department only, on or before March 1, 2009:

(1) Annual Statement (Texas Edition);

(2) Texas Overhead Assessment Exemption Form (Texas Edition). This form is to be filed only by domestic insurance companies that have qualified pension contracts under the Insurance Code §401.151; otherwise, this form should not be filed; and

(3) Statement of Actuarial Opinion, unless exempted under §7.31 of this title (relating to Annual Statement Instructions for Farm Mutual Insurance Companies).

(j) Requirements for statewide mutual assessment associations, local mutual aid associations, mutual burial associations and exempt associations. Each statewide mutual assessment association, local mutual aid association, mutual burial association and exempt association shall complete and file the following blanks and forms for the 2007 calendar year with the department only, on or before April 1, 2009:

(1) Annual Statement (Texas Edition) (exempt companies are required to complete all pages except lines 22, 23, 24, 25, and 26 on page 3, the special instructions at the bottom of page 3, and pages 4 - 7);

(2) Texas Overhead Assessment Exemption Form (Texas Edition). This form is to be filed only by domestic insurance companies that have qualified pension contracts under the Insurance Code §401.151; otherwise, this form should not be filed;

(3) Release of Contributions Form (Texas Edition);

(4) 3-1/2 Percent Chamberlain Reserve Table (Reserve Valuation) (Texas Edition);

(5) Reserve Summary (1956 Chamberlain Table 3-1/2 Percent) (Texas Edition);

(6) Inventory of Insurance in Force by Age of Issue or Reserving Year (Texas Edition); and

(7) Summary of Inventory of Insurance in Force by Age and Calculation of Net Premiums (Texas Edition).

(k) Requirements for nonprofit legal service corporations. Each nonprofit legal service corporation doing business as authorized by a certificate of authority issued under the Insurance Code Chapter 961 shall complete and file the following blanks and forms for the 2008 calendar year with the department only. An actuarial opinion is not required. The following forms are to be filed on or before March 1, 2009:

(1) Annual Statement (Texas Edition); and

(2) Texas Overhead Assessment Exemption Form (Texas Edition). This form is to be filed only by domestic insurance companies that have qualified pension contracts under the Insurance Code §401.151; otherwise, this form should not be filed.

(l) Requirements for Mexican casualty insurance companies. Each Mexican casualty insurance company doing business as authorized by a certificate of authority issued under the Insurance Code Chapter 984, shall complete and file the following blanks and forms for the 2008 calendar year with the department only. All submissions shall be printed or typed in English and all monetary values shall be clearly designated in United States dollars. The form identified in paragraph (1) of this subsection shall be completed to the extent specified in paragraph (1) of this subsection and in accordance with the "2008 Annual Statement Instructions, Property and Casualty." An actuarial opinion is not required. It is the express intent of this subsection that it shall not repeal or otherwise modify or amend any department rule or the Insurance Code. The following blanks or forms are to be filed on or before March 1, 2009:

(1) 2008 Property and Casualty Annual Statement; provided, however, only pages 1 - 4, and 104 (Schedule T) are required to be completed;

(2) A copy of the balance sheet and the statement of profit and loss from the Mexican financial statement (printed or typed in English);

(3) A copy of the official documents issued by the Comision Nacional de Seguros y Fianzas approving the 2008 annual statement; and

(4) A copy of the current license to operate in the Republic of Mexico.

(m) Other financial reports. Nothing in this section prohibits the department from requiring any insurer or other regulated entity from filing other financial reports with the department.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on December 19, 2008.

TRD-200806636
Gene C. Jarmon
General Counsel and Chief Clerk
Texas Department of Insurance
Earliest possible date of adoption: February 1, 2009
For further information, please call: (512) 463-6327

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TITLE 34. PUBLIC FINANCE

PART 3. TEACHER RETIREMENT SYSTEM OF TEXAS

CHAPTER 41. HEALTH CARE AND INSURANCE PROGRAMS
SUBCHAPTER A. RETIREE HEALTH CARE BENEFITS (TRS-CARE)

34 TAC §41.7

The Teacher Retirement System of Texas (TRS), as trustee of the health benefits program for TRS retirees (TRS-Care) under the Texas Public School Retired Employees Group Benefits Act (Chapter 1575 of the Insurance Code), proposes amendments to §41.7, relating to the effective date of coverage for an eligible individual who elects to enroll in TRS-Care. One of the proposed amendments addresses the effective date of TRS-Care coverage for an eligible surviving spouse or eligible dependent child of a deceased TRS service or disability retiree or deceased active TRS member (together, a Survivor). The other proposed amendment is a non-substantive change to eliminate a redundant explanatory rule reference.

Under the existing wording of §41.7(d), the effective date of coverage for a Survivor who is not enrolled in TRS-Care immediately preceding the death of the spouse or parent will be the first day of the month following TRS-Care's receipt of a timely submitted enrollment application. As a consequence, a Survivor must submit his or her enrollment application to TRS-Care before the end of the month in which the spouse or parent died in order to enroll in TRS-Care effective on the first day of the immediately following month. There have been a few recent situations in which a Survivor has not been able to submit his or her en-

rollment application quickly enough to avoid a month's delay in his or her effective date in TRS-Care. For example, if the active TRS member died in the third week of April, the surviving spouse might not have enough time to submit the enrollment application before April 30. Consequently, the submission of an enrollment application during the month of May, even though timely under 34 TAC §41.1, relating to initial enrollment periods for TRS-Care, would result in an effective date of coverage of June 1, not May 1. To avoid a potential month delay in coverage under TRS-Care, TRS proposes an amendment to §41.7.

Subsection (d) of §41.7 is proposed for amendment to provide that, if the Survivor is not enrolled in TRS-Care immediately preceding the death of the spouse or parent, the Survivor will be allowed to choose an effective date of coverage that is either: (1) the first day of the month following TRS-Care's receipt of an application during the initial enrollment period as described in §41.1; or (2) the first day of the month following the month of the retiree's or member's death, provided TRS-Care receives an application for enrollment in TRS-Care within the initial enrollment period as described in §41.1. Applying the proposed amendment to the example described in the preceding paragraph, upon the filing of a timely application for enrollment in TRS-Care, the Survivor may elect to have his or her TRS-Care coverage begin on May 1 or on June 1.

In addition, a non-substantive amendment is proposed for existing subsection (c) of §41.7 to delete a repetitive explanatory reference to another rule that already appears in subsection (a) of §41.7.

Ken Welch, TRS Chief Financial Officer, estimates that, for each year of the first five years that the proposed amended rule will be in effect, there will be no foreseeable implications relating to cost or revenues of the state or local governments as a result of enforcing or administering the amended sections.

For each year of the first five years that the proposed rules will be in effect, Ronnie Jung, TRS Executive Director, has determined that the public benefits expected as a result of the adoption of the proposed amended rule will be to grant to the Survivor greater flexibility in choosing his or her effective date of TRS-Care coverage. For each year of the first five years that the proposed rules will be in effect, Mr. Welch has determined that there will not be any probable economic costs to persons required to comply with the proposed amended rule. Mr. Welch has also determined that there will be no effect on local employment because of the proposal, and therefore no local employment impact statement is required under §2001.022 of the Government Code. In addition, Mr. Welch has determined that the proposed amended rule will have no adverse economic effect on small businesses or micro-businesses, and, therefore, neither an economic impact statement nor a regulatory flexibility analysis is required under §2006.002 of the Government Code.

Comments may be submitted in writing to Ronnie Jung, Executive Director, 1000 Red River Street, Austin, Texas 78701-2698. To be considered, written comments must be received by TRS no later than 30 days after publication of this notice.

Statutory Authority: The amended rule is proposed under §1575.052 of the Insurance Code, which authorizes TRS to adopt rules reasonably necessary to implement the Texas Public School Retired Employees Group Benefits Act (Chapter 1575 of the Insurance Code), including those relating to periods for enrollment and selection of optional coverage and procedures for enrolling and exercising options under TRS-Care.

Cross-reference to Statute: The proposed amended rule affects the following sections of the Insurance Code: §1575.156, relating to TRS-Care coverage for a surviving spouse or dependents of surviving spouse; and §1575.157, relating to TRS-Care coverage for a surviving dependent child.

§41.7. Effective Date of Coverage.

(a) - (b) (No change.)

(c) The effective date of coverage for a surviving spouse or for a surviving dependent child is the first day of his or her eligibility if TRS-Care receives an application within the initial enrollment period as described in §41.1 of this title [~~(relating to Initial Enrollment Periods for the Health Benefits Program Under the Texas Public School Retired Employees Group Benefits Act (TRS-Care))~~] and the deceased participant had the surviving spouse or the surviving dependent child enrolled in TRS-Care before the participant died.

(d) If the surviving spouse or the surviving dependent child was not enrolled in TRS-Care immediately preceding his or her becoming eligible for coverage, the effective date of coverage will be, at the election of the surviving spouse or the surviving dependent child, either the first day of the month following:

(1) TRS-Care's receipt of an application during the initial enrollment period as described in §41.1 of this title; or[~~,~~]

(2) the month of the death of the deceased TRS service or disability retiree or deceased active TRS member, provided TRS-Care receives an application during the initial enrollment period as described in §41.1 of this title.

(e) - (m) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on December 19, 2008.

TRD-200806626
Ronnie G. Jung
Executive Director
Teacher Retirement System of Texas
Earliest possible date of adoption: February 1, 2009
For further information, please call: (512) 542-6438

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TITLE 43. TRANSPORTATION

PART 1. TEXAS DEPARTMENT OF TRANSPORTATION

CHAPTER 24. TRANS-TEXAS CORRIDOR SUBCHAPTER B. DEVELOPMENT OF FACILITIES

43 TAC §24.13

The Texas Department of Transportation (department) proposes amendments to §24.13, concerning corridor planning and development.

EXPLANATION OF PROPOSED AMENDMENTS

The Texas Transportation Commission (commission) creates corridor segment committees for proposed segments of the Trans-Texas Corridor or certain transportation facilities that may become segments of the Trans-Texas Corridor to provide input, advice, and recommendations to the commission and the department regarding the designation of a route for the segment for which the committee was created and the construction of the proposed segment of the Trans-Texas Corridor or a facility that may become all or part of the segment.

As the commission recently began to consider representation on corridor segment committees, it became apparent that some organizations that have an interest in the transportation facilities and within whose service areas the proposed corridor segments will be located do not qualify for representation on the applicable committee under current 43 TAC §24.13.

Amendments to §24.13, Corridor Planning and Development, modify subsection (c)(2)(D) to add to the entities that the commission may designate for representation on a corridor segment committee, an organization, regardless of how it is formed, that has an interest in transportation and whose service area includes a part of the proposed segment and to provide the commission with the authority to appoint to the committee additional members who reside or have businesses in the area of the proposed segment and who have an interest in transportation. This change gives the commission the flexibility to add members to a corridor segment committee that represent a wide range of entities that have special interest in transportation in the area and that will be affected by the proposed segment of the Trans-Texas Corridor or a facility that may become a part of the corridor but that under the current rules are not allowed representation on the committee. Having members appointed by those entities will ensure that a committee represents the interests of local and regional groups that have an interest in where a segment or facility is located and whether it will be constructed.

FISCAL NOTE

James Bass, Chief Financial Officer, has determined that for each of the first five years the amendments as proposed are in effect, there will be no fiscal implications for state or local governments as a result of enforcing or administering the amendments.

Mark Tomlinson, Director, Turnpike Authority Division, has certified that there will be no significant impact on local economies or overall employment as a result of enforcing or administering the amendments.

PUBLIC BENEFIT AND COST

Mr. Tomlinson has also determined that for each year of the first five years the sections are in effect, the public benefit anticipated as a result of enforcing or administering the amendments will be to allow a broader representation on corridor segment committees which provide the commission and department with advice and recommendations regarding the route and construction of segments of the Trans-Texas Corridor. There are no anticipated economic costs for persons required to comply with the sections as proposed. There will be no adverse economic effect on small businesses.

SUBMITTAL OF COMMENTS

Written comments on the proposed amendments to §24.13 may be submitted to Mark Tomlinson, Director, Turnpike Authority Division, Texas Department of Transportation, 125 East 11th Street, Austin, Texas 78701-2483. The deadline for receipt of comments is 5:00 p.m. on February 2, 2009.

STATUTORY AUTHORITY

The amendments are proposed under Transportation Code, §201.101, which provides the commission with the authority to establish rules for the conduct of the work of the department, and more specifically, Transportation Code, §227.002, which provides the commission with the authority to adopt rules as necessary or convenient to implement and administer Transportation Code, Chapter 227.

CROSS REFERENCE TO STATUTE

Transportation Code, Chapter 227.

§24.13. Corridor Planning and Development.

(a) - (b) (No change.)

(c) Corridor segment committees.

(1) (No change.)

(2) Membership. A corridor segment committee consists of the following members:

(A) - (C) (No change.)

(D) additional members, each of whom: [~~representing the ports, chambers of commerce, or economic development councils and corporations designated by the commission, within whose service area all or part of a proposed segment or facility may be located, each of whom will be appointed by the governing body of a designated entity.~~]

(i) will represent, and be appointed by the governing body of, a port, chamber of commerce, economic development council or corporation, or other organization that has an interest in transportation, within whose service area all or part of a proposed segment or facility may be located and that is designated by the commission to appoint a member of the committee; or

(ii) is an individual who resides or has a business in the area in which the segment or facility may be located, has an interest in transportation, and is appointed to the committee by the commission.

(3) - (6) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on December 18, 2008.

TRD-200806571
Bob Jackson
General Counsel
Texas Department of Transportation
Earliest possible date of adoption: February 1, 2009
For further information, please call: (512) 463-8683

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ADOPTED RULES

Adopted rules include new rules, amendments to existing rules, and repeals of existing rules. A rule adopted by a state agency takes effect 20 days after the date on which it is filed with the Secretary of State unless a later date is required by statute or specified in the rule (Government Code, §2001.036). If a rule is adopted without change to the text of the proposed rule, then the *Texas Register* does not republish the rule text here. If a rule is adopted with change to the text of the proposed rule, then the final rule text is included here. The final rule text will appear in the Texas Administrative Code on the effective date.

TITLE 1. ADMINISTRATION

PART 5. TEXAS FACILITIES COMMISSION

CHAPTER 116. PROPERTY MANAGEMENT DIVISION

SUBCHAPTER A. STATE OWNED PROPERTY

1 TAC §116.14

Introduction and Background

The Texas Facilities Commission (the Commission) announces its adoption of new rule designated as 1 TAC §116.14, concerning requirements for energy-savings measures associated with certain vending machines located in State-owned or State-leased buildings. Section 116.14 is adopted without changes to the proposed text as published in the November 7, 2008, issue of the *Texas Register* (33 TexReg 9019). The new section is promulgated under the rulemaking authority granted to the Commission in Texas Government Code, §2165.058 (Vernon 2008).

Justification for the Rule

Section 116.14 is adopted to establish minimum technical specifications for energy-savings devices associated with certain new vending machines located in State-owned or State-leased buildings as required by statute. The new section also addresses energy-savings devices associated with certain existing vending machines located on State property and establishes a time period within which the requirements must be implemented.

Summary of Comments

The comment period ended December 8, 2008.

One comment was received from the public regarding the proposal of §116.14 in which the commenter inquired as to whether the proposed new rule would apply to vending machines located in public schools. Whether the proposed new rule, 1 TAC §116.14, applies to a public school is a fact question that depends on whether the specific public school is located within a building owned or leased by the State of Texas. For example, the Texas School for the Deaf, the Texas School for the Blind and Visually Impaired, and other public schools located in buildings owned or leased by the State of Texas would be affected by this rule. A public school operated within an independent school district may or may not be affected depending on ownership of the real property and buildings on which the school is located. The comment results in no change to the text of the proposed rule.

Statutory Authority

The new rule is adopted under Texas Government Code, §2165.058, which requires the Commission to promulgate rules relating to the specifications for and regulation of mandatory energy-savings devices on certain vending machines located in State-owned or State-leased buildings.

Cross Reference to Statute

The adopted rule affects §2165.058 of the Texas Government Code.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on December 18, 2008.

TRD-200806568
Kay Molina
General Counsel
Texas Facilities Commission
Effective date: January 7, 2009
Proposal publication date: November 7, 2008
For further information, please call: (512) 463-7161

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CHAPTER 126. SURPLUS AND SALVAGE PROPERTY PROGRAMS

Introduction and Background

The Texas Facilities Commission (the Commission) announces its adoption of amendments to 1 TAC §§126.1 - 126.4, concerning the transfer, sale, auction, or other disposition of State of Texas surplus and salvage property, either by the State agency that owns the subject property or by the Commission, on behalf of the State of Texas under Texas Government Code, Chapter 2175. The Commission further announces its adoption of the proposed repeal of 1 TAC §§126.5, 126.6, 126.20, and 126.21, relating to proceeds from disposition of State surplus and salvage property, purchase of chairs, and federal surplus and salvage property respectively, as the text provided the public no additional guidance or direction than that reflected in the governing statutes. The amendments to §§126.1 - 126.4 and the repeal of §§126.5, 126.6, 126.20, and 126.21 are adopted without changes to the proposal as published in the November 7, 2008, issue of the *Texas Register* (33 TexReg 9020). The rule amendments and repeals are adopted pursuant to the Commission's rulemaking authority found in Texas Government Code, §§2175.061(b) and (d); 2175.065(b); 2175.129(b); and 2175.186(b) (Vernon 2008).

Justification for the Rule

The amendments to 1 TAC §§126.1 - 126.4 are adopted to reflect the agency's name change, to ensure consistency with governing statutes, and to correct typographical errors. Adoption of the repeal of 1 TAC §§126.5, 126.6, 126.20, and 126.21 is proper as the text to these rules provide the public with no additional guidance or direction than contained in the governing statutes.

Summary of Comments

The comment period ended December 8, 2008. No comments were received.

SUBCHAPTER A. STATE SURPLUS AND SALVAGE PROPERTY

1 TAC §§126.1 - 126.4

Statutory Authority

The amendments are adopted under Texas Government Code, §§2175.061(b) and (d); 2175.065(b); 2175.129(b); and 2175.186(b) (Vernon 2008).

Cross Reference to Statute

The adopted amendments affect Chapter 2175 of the Texas Government Code.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on December 18, 2008.

TRD-200806563
Kay Molina
General Counsel
Texas Facilities Commission
Effective date: January 7, 2009
Proposal publication date: November 7, 2008
For further information, please call: (512) 463-7220

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1 TAC §126.5, §126.6

Statutory Authority

The repeal is adopted under Texas Government Code, §§2175.061(b) and (d); 2175.065(b); 2175.129(b); and 2175.186(b) (Vernon 2008).

Cross Reference to Statute

The adopted repeal affects Chapter 2175 of the Texas Government Code.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on December 18, 2008.

TRD-200806564
Kay Molina
General Counsel
Texas Facilities Commission
Effective date: January 7, 2009
Proposal publication date: November 7, 2008
For further information, please call: (512) 463-7220

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SUBCHAPTER B. FEDERAL SURPLUS AND SALVAGE PROPERTY

1 TAC §126.20, §126.21

Statutory Authority

The repeal is adopted under Texas Government Code, §§2175.061(b) and (d); 2175.065(b); 2175.129(b); and 2175.186(b) (Vernon 2008).

Cross Reference to Statute

The adopted repeal affects Chapter 2175 of the Texas Government Code.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on December 18, 2008.

TRD-200806567
Kay Molina
General Counsel
Texas Facilities Commission
Effective date: January 7, 2009
Proposal publication date: November 7, 2008
For further information, please call: (512) 463-7220

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TITLE 7. BANKING AND SECURITIES

PART 1. FINANCE COMMISSION OF TEXAS

CHAPTER 9. RULES OF PROCEDURE FOR CONTESTED CASE HEARINGS, APPEALS, AND RULEMAKINGS

SUBCHAPTER B. CONTESTED CASE HEARINGS

7 TAC §9.28

The Finance Commission of Texas (commission) adopts amendments to 7 TAC §9.28, concerning Prefiled Testimony. The amendments are adopted with changes to the proposal published in the August 22, 2008, issue of the *Texas Register* (33 TexReg 6657).

The purpose of the adopted amendments is to allow for more flexibility in the admission of prefiled written testimony of an investigator who is unavailable to the agency as a witness. The amendments preserve the fundamental right to cross-examination in a due process hearing while allowing an exception for the

admission of written agency investigation reports meeting the requirements of Rule 803, Texas Rules of Evidence when the investigator is unavailable to testify.

Since the proposal, minor grammatical and clarifying changes have been made to the amendments to §9.28. First, after the proposed deletion of "Sua sponte," the words "or on" are also being deleted, with the deletions being replaced by the words "or the." The amended introductory phrases of the first sentence now read as follows for this adoption: "On the judge's own motion, or the motion of any party, ..." The agency believes that these revisions provide the best grammatical structure. Second, in the proposed new language at the end of §9.28, the phrases "not available to the agency" and "not available" have both been replaced with the phrase "unavailable to the agency as a witness." Upon further review, the term "unavailable" is more streamlined and the parallel phrasing in both occurrences provides more clarity and consistency to the rule. Additionally, a clarifying reference to evidentiary Rule 804(a) has been added with the new last sentence of §9.28: "For purposes of this section 'unavailability as a witness' has the same meaning as in Rule 804(a), Texas Rules of Evidence."

The commission received no written comments on the proposal.

The amendments are adopted pursuant to Government Code, §2001.004, which requires a state agency to adopt rules of practice stating the nature and requirements of all available formal and informal procedures. The amendments are also adopted under specific rulemaking authority contained in the substantive statutes administered by the finance agencies under the jurisdiction of the commission, including Finance Code, §§11.301, 11.302, 11.304, 11.306, 14.157, 31.003, 66.002, 96.002, 151.102, 154.051, 156.102, 181.003, 201.003, 342.551, 351.003 (Tax Refund Anticipation Loans, Acts 2007, 80th Legislature, Chapter 135), 351.007 (Property Tax Lenders, Acts 2007, 80th Legislature, Chapter 1220), 348.513, 371.006, 394.214, and 396.051, Health and Safety Code, §711.012(a) and §712.008, and Tax Code, §32.06.

The statutory provisions affected by the adopted amendments are contained in Finance Code, Chapters 11, 12, 13, 14, 31, 35, 61, 66, 91, 96, 121, 151, 154, 156, 181, 185, 201, 301, 341, 342, 348, 351 (Tax Refund Anticipation Loans, Acts 2007, 80th Legislature, Chapter 135), 351 (Property Tax Lenders, known as the "Property Tax Lender License Act," Acts 2007, 80th Legislature, Chapter 1220), 371, 394, 396, Health and Safety Code, Chapters 711 and 712, and Tax Code, §32.06 and §32.065.

§9.28. Prefiled Testimony.

On the judge's own motion, or the motion of any party, the administrative law judge may omit oral presentation of the direct testimony of any witness and may allow prefiled written testimony to be presented in its place. The written testimony carries the same force and effect as though stated orally by the witness; provided that the witness must be present at the hearing at which such testimony is offered and adopt such testimony under oath, and must be made available for cross-examination. Written reports of agency investigations on fact issues, if offered into evidence in a hearing in which the facts covered by the report are directly at issue, will be treated as prefiled testimony and the investigator must be made available for cross-examination unless the investigator is unavailable to the agency as a witness or unless the report comes into evidence without objection. If the investigator is unavailable to the agency as a witness, the report shall be admissible under Rule 803, Texas Rules of Evidence if it meets the requirements for admission into evidence under that rule. For purposes of this section "unavailability as a witness" has the same meaning as in Rule 804(a), Texas Rules of Evidence.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on December 19, 2008.

TRD-200806643
Leslie L. Pettijohn
Executive Director
Finance Commission of Texas
Effective date: January 8, 2009
Proposal publication date: August 22, 2008
For further information, please call: (512) 936-7621

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PART 7. STATE SECURITIES BOARD

CHAPTER 113. REGISTRATION OF SECURITIES

7 TAC §§113.14 - 113.25

The Texas State Securities Board adopts the repeal of §§113.14 - 113.25, concerning registration of securities, without changes to the proposed text as published in the October 24, 2008, issue of the *Texas Register* (33 TexReg 8704).

The repealed sections are being replaced with new §113.14. The new section adopts by reference the North American Securities Administrators Association (NASAA) Statements of Policy (SOPs) concerning corporate securities definitions; impoundment of proceeds; loans and other material affiliated transactions; options and warrants; preferred stock; promoter's equity investment; promotional shares; specificity in use of proceeds; underwriting expenses, underwriter's warrants, selling expenses, and selling security holders; unsound financial condition; unequal voting rights; and debt securities. The repealed sections were based on the NASAA SOPs referenced in new §113.14.

Issuers of securities will be able to more easily determine that the NASAA SOPs apply to their registrations in Texas.

No comments were received regarding adoption of the repeals.

The repeals are adopted under Texas Civil Statutes, Article 581-28-1. Section 28-1 provides the Board with the authority to adopt rules and regulations necessary to carry out and implement the provisions of the Texas Securities Act, including rules and regulations governing registration statements and applications; defining terms; classifying securities, persons, and matters within its jurisdiction; and prescribing different requirements for different classes.

The repeals affect Texas Civil Statutes, Article 581-7.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on December 18, 2008.

TRD-200806592
Denise Voigt Crawford
Securities Commissioner
State Securities Board
Effective date: January 7, 2009
Proposal publication date: October 24, 2008
For further information, please call: (512) 305-8303

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7 TAC §113.14

The Texas State Securities Board adopts the new §113.14, concerning statements of policy, without changes to the proposed text as published in the October 24, 2008, issue of the *Texas Register* (33 TexReg 8704).

The new section replaces current registration guidelines, which are being concurrently repealed, by adopting by reference the North American Securities Administrators Association (NASAA) Statements of Policy (SOPs) named in the new rule. The NASAA SOPs that are adopted by reference will be available electronically through the agency web site and on the NASAA web site. Additionally, print copies will be available from the agency on request.

Uniformity with other states participating in the NASAA Coordinated State Review programs (CR-Equity and CR-DPP) will be enhanced and issuers of securities will be able to more easily determine that the NASAA SOPs apply to their registrations in Texas.

No comments were received regarding adoption of the new rule.

The new rule is adopted under Texas Civil Statutes, Article 581-28-1. Section 28-1 provides the Board with the authority to adopt rules and regulations necessary to carry out and implement the provisions of the Texas Securities Act, including rules and regulations governing registration statements and applications; defining terms; classifying securities, persons, and matters within its jurisdiction; and prescribing different requirements for different classes.

The new rule affects Texas Civil Statutes, Article 581-7.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on December 18, 2008.

TRD-200806591
Denise Voigt Crawford
Securities Commissioner
State Securities Board
Effective date: January 7, 2009
Proposal publication date: October 24, 2008
For further information, please call: (512) 305-8303

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CHAPTER 117. ADMINISTRATIVE GUIDELINES FOR REGISTRATION OF REAL ESTATE PROGRAMS

7 TAC §§117.1 - 117.9

The Texas State Securities Board adopts the repeal of §§117.1 - 117.9, concerning administrative guidelines for registration of real estate programs, without changes to the proposed text as published in the October 24, 2008, issue of the *Texas Register* (33 TexReg 8705).

The repealed sections are being replaced with a new §113.14 that adopts by reference the North American Securities Administrators Association (NASAA) Statement of Policy (SOP) for Real Estate Programs on which the repealed Chapter 117 was based.

Issuers of securities will be able to more easily determine that the NASAA SOPs apply to their registrations in Texas.

No comments were received regarding adoption of the repeals.

The repeals are adopted under Texas Civil Statutes, Article 581-28-1. Section 28-1 provides the Board with the authority to adopt rules and regulations necessary to carry out and implement the provisions of the Texas Securities Act, including rules and regulations governing registration statements and applications; defining terms; classifying securities, persons, and matters within its jurisdiction; and prescribing different requirements for different classes.

The repeals affect Texas Civil Statutes, Article 581-7.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on December 18, 2008.

TRD-200806593
Denise Voigt Crawford
Securities Commissioner
State Securities Board
Effective date: January 7, 2009
Proposal publication date: October 24, 2008
For further information, please call: (512) 305-8303

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CHAPTER 121. ADMINISTRATIVE GUIDELINES FOR REGISTRATION OF OIL AND GAS PROGRAMS

7 TAC §§121.1 - 121.10

The Texas State Securities Board adopts the repeal of §§121.1 - 121.10, concerning administrative guidelines for registration of oil and gas programs, without changes to the proposed text as published in the October 24, 2008, issue of the *Texas Register* (33 TexReg 8706).

The repealed sections are being replaced with a new §113.14 that adopts by reference the North American Securities Administrators Association (NASAA) Statement of Policy (SOP) for Oil and Gas Programs on which the repealed Chapter 121 was based.

Issuers of securities will be able to more easily determine that the NASAA SOPs apply to their registrations in Texas.

No comments were received regarding adoption of the repeals.

The repeals are adopted under Texas Civil Statutes, Article 581-28-1. Section 28-1 provides the Board with the authority to adopt

rules and regulations necessary to carry out and implement the provisions of the Texas Securities Act, including rules and regulations governing registration statements and applications; defining terms; classifying securities, persons, and matters within its jurisdiction; and prescribing different requirements for different classes.

The repeals affect Texas Civil Statutes, Article 581-7.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on December 18, 2008.

TRD-200806594
Denise Voigt Crawford
Securities Commissioner
State Securities Board
Effective date: January 7, 2009
Proposal publication date: October 24, 2008
For further information, please call: (512) 305-8303

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CHAPTER 129. ADMINISTRATIVE GUIDELINES FOR REGISTRATION OF ASSET-BACKED SECURITIES

7 TAC §§129.1 - 129.9

The Texas State Securities Board adopts the repeal of §§129.1 - 129.9, concerning administrative guidelines for registration of asset-backed securities, without changes to the proposed text as published in the October 24, 2008, issue of the *Texas Register* (33 TexReg 8707).

The repealed sections are being replaced with a new §113.14 that adopts by reference the North American Securities Administrators Association (NASAA) Statement of Policy (SOP) for Asset-backed Securities on which the repealed Chapter 129 was based.

Issuers of securities will be able to more easily determine that the NASAA SOPs apply to their registrations in Texas.

No comments were received regarding adoption of the repeals.

The repeals are adopted under Texas Civil Statutes, Article 581-28-1. Section 28-1 provides the Board with the authority to adopt rules and regulations necessary to carry out and implement the provisions of the Texas Securities Act, including rules and regulations governing registration statements and applications; defining terms; classifying securities, persons, and matters within its jurisdiction; and prescribing different requirements for different classes.

The repeals affect Texas Civil Statutes, Article 581-7.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on December 18, 2008.

TRD-200806596
Denise Voigt Crawford
Securities Commissioner
State Securities Board
Effective date: January 7, 2009
Proposal publication date: October 24, 2008
For further information, please call: (512) 305-8303

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CHAPTER 133. FORMS

7 TAC §133.31, §133.32

The Texas State Securities Board adopts the repeal of §133.31 and §133.32, forms concerning real estate guidelines cross reference sheet and REIT guidelines cross reference sheet, without changes to the proposed text as published in the October 24, 2008, issue of the *Texas Register* (33 TexReg 8707).

The repealed sections are being replaced with a new §113.14 that adopts by reference the North American Securities Administrators Association (NASAA) Statements of Policy (SOPs) for Real Estate Programs and Real Estate Investment Trusts. These NASAA SOPs include the forms on which the repealed forms were based.

Issuers of securities will be able to more easily determine that the NASAA SOPs apply to their registrations in Texas.

No comments were received regarding adoption of the repeals.

The repeals are adopted under Texas Civil Statutes, Article 581-28-1. Section 28-1 provides the Board with the authority to adopt rules and regulations necessary to carry out and implement the provisions of the Texas Securities Act, including rules and regulations governing registration statements and applications; defining terms; classifying securities, persons, and matters within its jurisdiction; and prescribing different requirements for different classes.

The repeals affect Texas Civil Statutes, Article 581-7.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on December 18, 2008.

TRD-200806599
Denise Voigt Crawford
Securities Commissioner
State Securities Board
Effective date: January 7, 2009
Proposal publication date: October 24, 2008
For further information, please call: (512) 305-8303

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CHAPTER 141. ADMINISTRATIVE GUIDELINES FOR REGISTRATION OF EQUIPMENT PROGRAMS

7 TAC §§141.1 - 141.8

The Texas State Securities Board adopts the repeal of §§141.1 - 141.8, concerning administrative guidelines for registration of equipment programs, without changes to the proposed text as

published in the October 24, 2008, issue of the *Texas Register* (33 TexReg 8708).

The repealed sections are being replaced with a new §113.14 that adopts by reference the North American Securities Administrators Association (NASAA) Statement of Policy (SOP) for Equipment Programs on which the repealed Chapter 141 was based.

Issuers of securities will be able to more easily determine that the NASAA SOPs apply to their registrations in Texas.

No comments were received regarding adoption of the repeals.

The repeals are adopted under Texas Civil Statutes, Article 581-28-1. Section 28-1 provides the Board with the authority to adopt rules and regulations necessary to carry out and implement the provisions of the Texas Securities Act, including rules and regulations governing registration statements and applications; defining terms; classifying securities, persons, and matters within its jurisdiction; and prescribing different requirements for different classes.

The repeals affect Texas Civil Statutes, Article 581-7.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on December 18, 2008.

TRD-200806597
Denise Voigt Crawford
Securities Commissioner
State Securities Board
Effective date: January 7, 2009
Proposal publication date: October 24, 2008
For further information, please call: (512) 305-8303

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CHAPTER 143. ADMINISTRATIVE GUIDELINES FOR REGISTRATION OF REAL ESTATE INVESTMENT TRUSTS

7 TAC §§143.1 - 143.8

The Texas State Securities Board adopts the repeal of §§143.1 - 143.8, concerning administrative guidelines for registration of real estate investment trusts, without changes to the proposed text as published in the October 24, 2008, issue of the *Texas Register* (33 TexReg 8708).

The repealed sections are being replaced with a new §113.14 that adopts by reference the North American Securities Administrators Association (NASAA) Statement of Policy (SOP) for Real Estate Investment Trusts on which the repealed Chapter 143 was based.

Issuers of securities will be able to more easily determine that the NASAA SOPs apply to their registrations in Texas.

No comments were received regarding adoption of the repeals.

The repeals are adopted under Texas Civil Statutes, Article 581-28-1. Section 28-1 provides the Board with the authority to adopt rules and regulations necessary to carry out and implement the provisions of the Texas Securities Act, including rules and regulations governing registration statements and applications; defining terms; classifying securities, persons, and matters within its jurisdiction; and prescribing different requirements for different classes.

The repeals affect Texas Civil Statutes, Article 581-7.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on December 18, 2008.

TRD-200806598
Denise Voigt Crawford
Securities Commissioner
State Securities Board
Effective date: January 7, 2009
Proposal publication date: October 24, 2008
For further information, please call: (512) 305-8303

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TITLE 13. CULTURAL RESOURCES

PART 5. TEXAS STATE CEMETERY COMMITTEE

CHAPTER 71. TEXAS STATE CEMETERY

13 TAC §71.11

Introduction and Background.

The Texas State Cemetery Committee (the Committee) adopts amendments to 13 TAC §71.11, concerning regulation of monuments in the Texas State Cemetery. The amended section is adopted without changes to the proposed text as published in the September 26, 2008, issue of the *Texas Register* (33 TexReg 8108).

The Committee oversees all operations of the Texas State Cemetery pursuant to Texas Government Code, §2165.256(a) (Vernon 2008). The amended section relates to monuments placed on the grounds of the Texas State Cemetery. Pursuant to §71.11(11), the term, "monuments," is defined as "any marker, headstone, gravestone, grave marker, tablet, memorial, columbarium, urn, niche, niche panel, ledger stone, boulder or any other structure, memorial of granite, marble or other material intended to commemorate the deceased."

Justification for the Rule.

The amended section is adopted to clarify the timeframe within which permanent markers must be placed at gravesites on the grounds of the Texas State Cemetery. The amended section also addresses placement of permanent markers for gravesites presently unmarked.

Summary of Comments.

The comment period ended October 27, 2008. No comments were received from the public regarding the proposal of the amended section.

Statutory Authority.

The amended section is adopted under Texas Government Code, §2165.256(i), which requires the Committee to adopt

rules regulating the monuments erected on the grounds of the Texas State Cemetery, and §2165.2561(m), which gives the Committee the discretion to adopt necessary rules related to the administration of the Texas State Cemetery.

Cross Reference to Statute.

The amended section affects §2165.256 and §2165.2561 of the Texas Government Code.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on December 18, 2008.

TRD-200806590
Kay Molina
General Counsel
Texas State Cemetery Committee
Effective date: January 7, 2009
Proposal publication date: September 26, 2008
For further information, please call: (512) 463-4257

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TITLE 16. ECONOMIC REGULATION

PART 2. PUBLIC UTILITY COMMISSION OF TEXAS

CHAPTER 25. SUBSTANTIVE RULES APPLICABLE TO ELECTRIC SERVICE PROVIDERS

SUBCHAPTER H. ELECTRICAL PLANNING

DIVISION 1. RENEWABLE ENERGY RESOURCES AND USE OF NATURAL GAS

16 TAC §25.173

The Public Utility Commission of Texas (commission) adopts an amendment to §25.173, relating to the Goal for Renewable Energy, with changes to the proposed text as published in the September 12, 2008 issue of the *Texas Register* (33 TexReg 7655). The amendment will implement Public Utility Regulatory Act (PURA) §39.904(m-1) and (m-2), which allow customers taking electric service at transmission-level voltage to opt out of the renewable energy portfolio standard program and direct the commission to establish the reporting requirements and a schedule associated with opting out of this program. This rule is a competition rule subject to judicial review as specified in PURA §39.001(e). This amendment is adopted under Project Number 35628.

The commission received initial comments on the amendment from Good Company Associates (Good Company), Reliant Energy Retail Services, LLC (Reliant), Texas Industrial Energy Consumers (TIEC), and TXU Energy Retail Company, LLC (TXU). TXU and TIEC submitted reply comments, along with El Paso Electric Company, Entergy Texas, Inc., Southwestern Electric Power Company, and Southwestern Public Service Company, who filed as Joint Parties (Joint Parties). TIEC also provided supplemental reply comments. No stakeholder requested a public hearing.

Preamble Question 1

Does PURA permit or require the commission to allow customers receiving electric service at transmission-level voltage who provided the commission with notice in calendar year 2007 to opt out in compliance year 2008 (a) despite the rule not being in effect at the time that notice was provided or (b) if the rule is not in effect by the end of compliance year 2008? If the commission is permitted but not required to allow such opt-outs, should the commission do so?

Good Company stated that if customer notice was provided to the commission in 2007 after the law became effective, then the commission is required to reduce the requirement for that customer. TIEC stated that the ability of industrial customers to opt out became effective when §39.904(m-1) was adopted by the legislature and that the statute allows customers who submitted opt-out notices in 2007 to be excluded from the renewable portfolio standard (RPS) calculations for the 2008 compliance period. TIEC stated that the statute simply requires a customer who wishes to opt out to submit a notice to the commission "before any year for which the commission calculates renewable energy requirements."

TIEC also stated that customers who filed their opt-out notice in 2007 submitted that notice before 2008, the year for which the commission will calculate the renewable energy requirement. Thus, the commission should allow customers who complied with §39.904(m-1) by submitting notice in 2007 to opt out of the RPS program for the 2008 compliance period. Moreover, TIEC stated that the RPS allocation for the 2008 compliance period will not be calculated until early 2009. Under §14.9 of the Electric Reliability Council of Texas (ERCOT) Protocols, the allocation is not conducted until the first quarter of the year following the compliance period. This means that the allocation for the 2008 compliance period will not be calculated until the first quarter of 2009. TIEC stated that allowing industrial customers to opt out for the 2008 compliance period will not create any additional obstacles for the 2008 allocation, as that process will not commence until 2009. Therefore, TIEC continued, allowing the customers who submitted notice in 2007 to opt out for the 2008 compliance period would not create any additional allocation issues. TIEC recommended that the commission allow customers who opted out in 2007 to be excluded from the RPS requirements for 2008.

Commission Response

The commission agrees with Good Company and TIEC that the legislature established a statutory right for eligible customers to be excluded from the RPS allocation for 2008, regardless of when the proposed rule takes effect. Moreover, allowing these customers to opt out will not complicate the RPS allocation process, which has not yet occurred for 2008. Therefore, those customers that opted out by the close of Calendar Year 2007 for the 2008 compliance period will be excluded from the RPS requirements for 2008.

General Comments

The Joint Parties stated that the amendment includes the filing of a tariff by investor-owned utilities (IOUs) to remove renewable energy credit costs that have been allocated to opt out transmission-level voltage customers; however, the amendment fails to adequately address the recovery of costs being removed. The

Joint Parties stated that because renewable energy credit (REC) costs are included in IOU rates, the complexity of cost recovery and allocation increases in the event transmission-level voltage customers opt out. Joint Parties stated that a mechanism should be provided for the IOU to recover those costs from remaining customers. Implementation of PURA §39.904(m) and (m-1) in a manner prescribed by the amendment may result in trapped, and otherwise unrecoverable, reasonable and necessary costs if cost recovery and allocation issues are not more fully addressed in this rulemaking or another proceeding for each of the non-ERCOT IOUs. The Joint Parties stated that the best way to mitigate the complexities of cost recovery is not to include such costs in base rates of the non-ERCOT IOUs, but to treat those costs as fuel. Joint Parties proposed that these costs be collected through the fuel factor and later reconciled, and that a revision to the rule be made to allow for this recovery method.

TIEC replied that the amendment will not cause any entity to have an RPS allocation that is based on energy sales to customers who have opted out. In other words, TIEC stated, no retail entity will have a REC requirement that is disproportionate to the sales from which it can recover the costs of that requirement. Each entity's RPS allocation will be based on its retail sales to the customers that remain after any transmission-level voltage customers have opted out. TIEC added that the amendment is clear that, "prior to the preliminary RPS allocation, each retail entity's total retail energy sales are reduced to exclude the consumption of customers that opt-out..." TIEC concluded that this process ensures that the sales attributable to the opt-out customers are taken out of the allocation process upfront, so no "trapping" will result from subsequent adjustments or reallocations. Lastly, TIEC argued that because the RPS allocation for the 2008 compliance period has not yet occurred, even allowing transmission-level voltage customers to opt out for 2008 will not result in an RPS allocation that is disproportionate to an entity's remaining retail sales.

Commission Response

A utility's REC obligation may either increase or decrease as a result of opt-outs, depending on the amount of the utility's retail energy sales that are removed from the REC obligation calculation in relation to the total statewide amount of retail energy sales that are removed. Each retail entity's preliminary REC allocation is determined by dividing its total retail energy sales in Texas (numerator) by the total retail sales in Texas of all retail entities (denominator), and multiplying that percentage by the total statewide REC requirement. The opt-out of a utility's customers will decrease the numerator in the calculation, whereas the denominator will be reduced by the opt-outs for all retail entities. The utility's REC obligation will increase if the percentage of its retail sales that are opted-out is higher than the average opt-out percentage for retail entities, whereas the utility's REC obligation will decrease if its opt-out percentage is higher than average.

The commission believes that the amendment will not result in a significant "trapping of costs" for non-ERCOT IOUs. Under the amended rule, the program administrator determines the retail entity's obligation for a compliance period by January 31 of the year following the compliance period, and the retail entity must retire RECs to meet its obligation by March 31. This schedule allows the retail entity to retire the exact number of RECs that are required to meet its obligation and reduce or eliminate trapped costs by selling RECs that are in excess to its needs.

Joint Parties stated that if the commission determines that REC costs should be recovered in base rates of non-ERCOT IOUs, the amendment creates cost recovery challenges. The utility could re-file all of its tariffs without having to file a full base rate case or a separate surcharge mechanism could be adopted by the commission. Further, the surcharge could be periodically updated to recover costs from remaining customers.

Commission Response

The commission does not agree with the Joint Parties that re-filing of all tariffs or the adoption of an alternative mechanism to recover REC costs will be necessary. A utility's costs and revenues are not static over time. Although some costs may increase, others may decrease. As indicated by PURA §36.051, if a utility's overall revenues are insufficient to recover its total costs and a reasonable return, it has the option of filing an application to increase rates. Although a utility's net costs may increase as a result of industrial opt-outs, the commission believes that the net cost will be relatively small. If the impact to utilities becomes substantial as more customers opt out of the RPS requirement, the commission may adopt a REC-specific cost recovery mechanism. The commission can address this issue at a later date.

Subsection (c)

TIEC stated that the rule should be revised to include a definition of "transmission-level voltage customer." Defining this term will ensure that not only those customers that take electric service at 60 kilovolts (kV) or higher are eligible to submit an opt-out notice under the rule, but also those customers that receive service directly through a utility-owned substation that is connected at 60kV or higher. TIEC stated that customers receiving service directly through a utility-owned substation are effectively "transmission-level customers," as there are no "distribution assets" required to serve that customer. By virtue of the customer purchasing transformation service (either by leasing or through a transformation tariff), the utility effectively provides transmission-level service to the customer. Consequently, these customers should be eligible to submit an opt-out notice under the rule. In certain utility service areas, customers may own or lease the substation facilities. In other utility service areas, the utility owns the substation and customers are often discouraged from doing so. In both cases, the customer is taking electric service without the use of distribution assets. Thus, customers that do not own the substation should not be treated differently for purposes of the rule.

Commission Response

The commission agrees with TIEC that a definition for "transmission-level voltage customer" should be added to the rule and has changed the rule in accordance with this recommendation.

Subsection (h)

Reliant stated that the proposed allocation language is complicated to implement in competitive areas. For this calculation to be done accurately, the REC program administrator, ERCOT, needs to know which retail electric providers (REPs) are serving an opt-out customer, and more specifically, which electric service identifiers (ESI IDs) are served by which REP(s). Reliant recommended that the opt-out customer provide information directly to ERCOT concerning the specific customer ESI IDs and the REPs serving those ESI IDs. This information would need to be handled in accordance with procedures that will protect confidentiality.

Commission Response

The commission agrees with Reliant that opt-out customers should provide information to ERCOT, as well as to the commission, concerning the specific customer ESI IDs and the REPs serving those ESI IDs when sending in the notice for purposes of the calculation. The commission further agrees that this information should be handled in accordance with procedures that protect the confidentiality of the customers opting out. Accordingly, the commission changes subsection (j)(3) concerning contents of the opt-out notice. To the extent that a customer provided an opt-out notice prior to the effective date of this section but did not include the ESI ID information, the customer may amend the notice after the effective date to provide the information.

Subsection (j)(1)

Good Company stated that as a further measure of disclosure, the notice required should include both the name of the customer opting out and the name of the corporate parent. Good Company stated that because of the link between a parent and its subsidiaries, the public should have access to the names of both entities when reviewing a notice to opt out. This would avoid a situation where multiple subsidiaries have opted out, but the more commonly known corporate parent is not included in the notice. TIEC replied that no such requirement exists in the statute, and that such disclosure is unnecessary and potentially burdensome, and opposed Good Company's recommendation.

Commission Response

The commission agrees with Good Company that the notice should include the name of the customer opting out. The commission rejects the recommendation by Good Company that the opt-out notice include the name of the corporate parent and agrees with TIEC that the statute does not require that level of disclosure and that providing the information is unnecessary to implement the statutory requirements.

To improve organization of the rule, Reliant recommended that the statement in proposed subsection (j)(1), specifying that the opt-out period can be up to two years, be moved to paragraph (3), where the proposed rule addresses filing of the notice. Reliant further recommended that the first sentence of subsection (j)(1) be deleted. Reliant stated that the rules do not place any RPS requirement on customers, so there is no reason to state that a customer is excluded from the RPS requirement. TIEC did not agree with Reliant that subsection (j)(1) should be removed. TIEC stated that this paragraph is meant to be a general statement of the rule and cannot reasonably be interpreted to limit a REP's ability to contract for specific terms with a customer who opts out of the RPS requirement. Under the terms of the amendment, a REP and a transmission-level voltage customer should be allowed to agree to pricing and service terms as determined by the market. Thus, the language in subsection (j)(1) is necessary to establish a context for the more detailed and technical provisions of the rule.

Commission Response

The commission agrees with Reliant that the provision in subsection (j)(1) specifying that the opt-out period can be up to two years is better suited to be located in subsection (j)(3) and has changed the rule accordingly. However, the commission does not agree with Reliant that subsection (j)(1) should be deleted in its entirety; rather, the commission agrees with TIEC that retaining the opening statement of subsection (j)(1) is necessary to establish the context of the rule, but the commission is modifying the sentence to clarify that the opt-out customer's load, and not the actual customer, is excluded from the RPS calculation.

Subsection (j)(2)

Reliant stated that PURA §39.904(m-3) is applicable to the amendment, and stated that the subsection does not alter the renewable energy goals or targets established in §39.904(a) or reduce the minimum statewide renewable energy requirements of §39.940(c)(1). Reliant stated further that the statute does not state that a REP is required to charge the customer anything different as a result of these provisions. Reliant explained that in accordance with the existing REC program structure, a REP with an opt-out customer would have a number of RECs reduced from its requirement, but would also have RECs added (to maintain the overall REC requirement), which may or may not result in a benefit. Therefore, as a practical matter, Reliant added that REPs must consider REC program compliance costs in setting their prices. The commission cannot prohibit a REP from pricing in a way to try to cover its costs. Further, many contracts have a bundled price negotiated between REP and customer, so there is no practical way for a REP to prove that certain costs were not included in a particular customer's price. Reliant recommended the language be changed to remove any implication that REPs' prices are subject to regulation and be clarified to apply only to IOUs.

TXU stated that REPs who have executed other contract terms with customers affected by the amendment should be excluded from the requirements. TXU also stated that it does not believe treatment of the costs attributable to the REC program between REPs and eligible customers needs to be specified in the rule. TXU stated that the contract between the REP and the transmission-level voltage customer should be allowed to dictate the requirements related to REC payments and costs, since the contract defines the terms and conditions of each party to the contract. TXU further stated that many REPs and transmission-level voltage customers are currently operating under long-term contracts. Requiring REPs to absorb REC costs that they may have built into their pricing structure and agreed to with their customers may severely burden such entities financially. The REPs may gain a financial benefit from the opt-out of their customers; however, pricing decisions may have been made well in advance and at different price points and under a different set of assumptions. TXU agreed to the language recommended by Reliant.

TIEC stated that a contract between a REP and an individual transmission-level voltage customer should govern under the terms of the rule. However, TIEC did not oppose clarifying that subsection (j)(2) applied only to IOUs, as proposed by Reliant.

Commission Response

The commission agrees with Reliant that the statute does not require that a REP is required to charge a customer anything different as a result of the new provisions. The commission also agrees with TXU to the extent that treatment between REPs and eligible customers of the costs attributable to the REC program do not need to be addressed in the rule. Accordingly, the commission is changing subsection (j)(2) to limit its application to IOUs.

Subsection (j)(3)

TXU Energy recommended that the customers opting out should submit their ESI ID, meter number, or unique account numbers. Similarly, Reliant recommended that customers who opt out be required to provide their ESI IDs and identify the REP who

serves those ESI IDs. TIEC agreed with TXU that customers who opt out must provide appropriate identifying information, but agreed with Reliant that any confidential information must be protected. Accordingly, TIEC supported adding language to subsection (j)(3) requiring the addition of ESI IDs and applicable account information as proposed by TXU.

Commission Response

The commission agrees that identifying information is necessary and has adopted the changes to subsection (j)(3) recommended by Reliant, TIEC, and TXU, except that it does not believe that customer account information is necessary to identify the customer. Further, the commission has changed this subsection to require customers who revoke an opt-out notice to notify ERCOT as well as the commission of the revocation.

All comments, including any not specifically discussed herein, were fully considered by the commission.

This amendment is adopted under the Public Utility Regulatory Act, Texas Utilities Code Annotated §14.002 (Vernon 2007 and Supp. 2008) (PURA), which provides the commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction; and specifically §39.904(m-1), which allows customers taking electric service at transmission-level voltage to opt out from the renewable energy portfolio standard program; §39.904(m-2), which directs the commission to establish the reporting requirements and schedule associated with opting-out from this program; and §39.904(m-3), which provides that subsections (m-1) and (m-2) do not alter the goals or targets established by §39.904.

Cross Reference to Statutes: PURA §§14.002, 39.904(m-1), 39.904(m-2), and 39.904(m-3).

§25.173. Goal for Renewable Energy.

(a) Purpose. The purposes of this section are:

(1) to ensure that the cumulative installed generating capacity from renewable energy technologies in this state totals 2,280 megawatts (MW) by January 1, 2007, 3,272 MW by January 1, 2009, 4,264 MW by January 1, 2011, 5,256 MW by January 1, 2013, and 5,880 MW by January 1, 2015, with a target of at least 500 MW of the total installed renewable capacity after September 1, 2005, coming from a renewable energy technology other than a source using wind energy, and that the means exist for the state to achieve a target of 10,000 MW of installed renewable capacity by January 1, 2025;

(2) to provide for a renewable energy credits trading program by which the renewable energy requirements established by the Public Utility Regulatory Act (PURA) §39.904(a) may be achieved in the most efficient and economical manner;

(3) to encourage the development, construction, and operation of new renewable energy resources at those sites in this state that have the greatest economic potential for capture and development of this state's environmentally beneficial resources;

(4) to protect and enhance the quality of the environment in Texas through increased use of renewable resources; and

(5) to ensure that all customers have access to providers of energy generated by renewable energy resources pursuant to PURA §39.101(b)(3).

(b) Application. This section applies to power generation companies as defined in §25.5 of this title (relating to Definitions), and retail entities as defined in subsection (c) of this section.

(c) Definitions.

(1) Compliance period--A calendar year beginning January 1 and ending December 31 of each year in which renewable energy credits are required of a retail entity.

(2) Compliance premium--A premium awarded by the program administrator in conjunction with a renewable energy credit that is generated by a renewable energy source that is not powered by wind and meets the criteria of subsection (m) of this section. For the purpose of the renewable energy portfolio standard requirements, one compliance premium is equal to one renewable energy credit.

(3) Designated representative--A responsible natural person authorized by the owners or operators of a renewable resource to register that resource with the program administrator. The designated representative must have the authority to represent and legally bind the owners and operators of the renewable resource in all matters pertaining to the renewable energy credits trading program.

(4) Existing facilities--Renewable energy generators placed in service before September 1, 1999.

(5) Generation offset technology--Any renewable technology that reduces the demand for electricity at a site where a customer consumes electricity. An example of this technology is solar water heating.

(6) Microgenerator--A customer who owns one or more eligible renewable energy generating units with a rated capacity of less than 1MW operating on the customer's side of the utility meter.

(7) New facilities--Renewable energy generators placed in service on or after September 1, 1999. A new facility includes the incremental capacity and associated energy from an existing renewable facility achieved through repowering activities undertaken on or after September 1, 1999.

(8) Off-grid generation--The generation of renewable energy in an application that is not interconnected to a utility transmission or distribution system.

(9) Opt-Out Notice--Written notice submitted to the commission by a transmission-level voltage customer pursuant to PURA §39.904(m-1).

(10) Program administrator--The entity approved by the commission that is responsible for carrying out the administrative responsibilities related to the renewable energy credits trading program as set forth in subsection (g) of this section.

(11) REC aggregator--An entity managing the participation of two or more microgenerators in the REC trading program.

(12) REC offset (offset)--A REC offset represents one megawatt-hour (MWh) of renewable energy from an existing facility that is not eligible to earn renewable energy credits or compliance premiums.

(13) Renewable energy credit (REC or credit)--A REC represents one MWh of renewable energy that is physically metered and verified in Texas and meets the requirements set forth in subsection (e) of this section.

(14) Renewable energy credit account (REC account)--An account maintained by the renewable energy credits trading program administrator for the purpose of tracking the production, sale, transfer, purchase, and retirement of RECs or compliance premiums by a program participant.

(15) Renewable energy credits trading program (trading program)--The process of awarding, trading, tracking, and submitting

RECs or compliance premiums as a means of meeting the renewable energy requirements set out in subsection (d) of this section.

(16) Renewable energy resource (renewable resource)--A resource that produces energy derived from renewable energy technologies.

(17) Renewable energy technology--Any technology that exclusively relies on an energy source that is naturally regenerated over a short time and derived directly from the sun, indirectly from the sun, or from moving water or other natural movements and mechanisms of the environment. Renewable energy technologies include those that rely on energy derived directly from the sun, wind, geothermal, hydroelectric, wave, or tidal energy, or on biomass or biomass-based waste products, including landfill gas. A renewable energy technology does not rely on energy resources derived from fossil fuels, waste products from fossil fuels, or waste products from inorganic sources.

(18) Renewable Portfolio Standard (RPS)--The amount of capacity required to meet the requirements of PURA §39.904 pursuant to subsection (h) of this section.

(19) Repowered Facility--An existing facility that has been modernized or upgraded to use renewable energy technology to produce electricity consistent with this rule.

(20) Retail entity--Municipally-owned utilities, generation and transmission cooperatives and distribution cooperatives that offer customer choice; retail electric providers (REPs); and investor-owned utilities that have not unbundled pursuant to PURA Chapter 39.

(21) Settlement period--The first calendar quarter following a compliance period in which the settlement process for that compliance period takes place.

(22) Small producer--A renewable resource that is less than ten megawatts (MW) in size.

(23) Transmission-level voltage customer--A customer that receives electric service at 60 kilovolts (kV) or higher or that receives electric service directly through a utility-owned substation that is connected to the transmission network at 60 kV or higher.

(d) Renewable energy credits trading program (trading program). Renewable energy credits may be generated, transferred, and retired by renewable energy power generators certified pursuant to subsection (o) of this section, retail entities, and other market participants as set forth in this section.

(1) The program administrator shall apportion an RPS requirement among all retail entities as a percentage of the retail sales of each retail entity as set forth in subsection (h) of this section. Each retail entity shall be responsible for retiring sufficient RECs as set forth in subsections (h) and (l) of this section to comply with this section. The requirement to retire RECs to comply with this section becomes effective on the date a retail entity begins serving retail electric customers in Texas or, for an electric utility, as specified by law.

(2) A power generating company may participate in the program and may generate RECs and buy or sell RECs as set forth in subsection (l) of this section.

(3) RECs shall be credited on an energy basis as set forth in subsection (l) of this section.

(4) Municipally-owned utilities and distribution cooperatives that do not offer customer choice have no RPS requirement. However, regardless of whether the municipally-owned utility or distribution cooperative offers customer choice, a municipally-owned utility or distribution cooperative possessing renewable resources that meet the requirements of subsection (e) of this section may sell RECs generated by such a resource to retail entities as set forth in subsection (l) of this section.

(5) Except where specifically stated, the provisions of this section shall apply uniformly to all participants in the trading program.

(e) Facilities eligible for producing RECs and compliance premiums in the renewable energy credits trading program. For a renewable facility to be eligible to produce RECs and compliance premiums in the trading program it must be either a new facility, a small producer, or a repowered facility as defined in subsection (c) of this section and must also meet the requirements of this subsection.

(1) A renewable energy resource must not be ineligible under subsection (f) of this section and must register pursuant to subsection (o) of this section.

(2) For a renewable energy technology that requires fossil fuel, the facility's use of fossil fuel must not exceed 25.0% of the total annual fuel input on a British thermal unit (BTU) or equivalent basis.

(3) For a renewable energy technology that requires the use of fossil fuel that exceeds 2.0% of the total annual fuel input on a BTU or equivalent basis, RECs can only be earned on the renewable portion of the production. A renewable energy resource using a technology described by this paragraph shall comply with the following requirements:

(A) A meter shall be installed and periodic tests of the heat content of the fuel shall be conducted to measure the amount of fossil fuel input on a British thermal unit (BTU) or equivalent basis that is used at the facility;

(B) The renewable energy resource shall calculate the electricity generated by the unit in MWh, based on the BTUs (or equivalent) produced by the fossil fuel and the efficiency of the renewable energy resource, subtract the MWh generated with fossil fuel input from the total MWh of generation and report the renewable energy generated to the program administrator;

(C) The renewable energy resource shall report the generation to the program administrator in the measurements, format and frequency prescribed by the program administrator, which may include a description of the methodology for calculating the non-renewable energy produced by the resource; and

(D) The renewable energy resource is subject to audit to verify the accuracy of the data submitted to the program administrator and compliance with this section, to be conducted by the program administrator or an independent third party, as requested by the program administrator. If the program administrator requires a third party audit, the audit shall be performed at the expense of the renewable energy resource.

(4) The output of the facility must be readily capable of being physically metered and verified in Texas by the program administrator. Energy from a renewable facility that is delivered into a transmission system where it is commingled with electricity from non-renewable resources before being metered can not be verified as delivered to Texas customers. A facility is not ineligible by virtue of the fact that the facility is a generation-offset, off-grid, or on-site distributed renewable facility if it otherwise meets the requirements of this section.

(5) For a municipally owned utility operating a gas distribution system, any production or acquisition of landfill gas that is directly supplied to the gas distribution system is eligible to produce RECs based upon the conversion of the thermal energy in BTUs to electric energy in kWh using for the conversion factor the systemwide average heat rate of the gas-fired units of the combined utility's electric system as measured in BTUs per kWh.

(6) For industry-standard thermal technologies, the RECs can be earned only on the renewable portion of energy production. Furthermore, the contribution toward statewide renewable capacity megawatt goals from such facilities shall be equal to the fraction of the facility's annual MWh energy output from renewable fuel multiplied by the facility's nameplate MW capacity.

(7) For repowered facilities, a facility is eligible to earn RECs on all renewable energy produced up to a capacity of 150 MW. A repowered facility with a capacity greater than 150 MW may earn RECs for the energy produced in proportion to 150 divided by nameplate capacity.

(f) Facilities not eligible for producing RECs in the renewable energy credits trading program. A renewable facility is not eligible to produce RECs in the trading program if it is:

(1) A renewable energy capacity addition associated with an emissions reductions project described in Health and Safety Code §382.05193, that is used to satisfy the permit requirements in Health and Safety Code §382.0519; or

(2) An existing facility that is not a small producer as defined in subsection (c) of this section or has not been repowered as permitted under subsection (e) of this section.

(g) Responsibilities of program administrator. The commission shall appoint an independent entity to serve as the trading program administrator. At a minimum, the program administrator shall perform the following functions:

(1) Create accounts that track RECs or compliance premiums for each participant in the trading program;

(2) Award RECs or compliance premiums to registered renewable energy facilities on a quarterly basis based on verified meter reads;

(3) Award offsets to retail entities on an annual basis based on a nomination submitted by the retail entity pursuant to subsection (i) of this section;

(4) Annually record the retirement of RECs or compliance premiums that each retail entity submits;

(5) Retire RECs at the end of each REC's compliance life;

(6) Maintain public information on its website that provides trading program information to interested buyers and sellers of RECs;

(7) Create an exchange procedure where persons may purchase and sell RECs or compliance premiums. The exchange shall ensure the anonymity of persons purchasing or selling RECs or compliance premiums. The program administrator may delegate this function to an independent third party, subject to commission approval;

(8) Make public each month the total energy sales of retail entities in Texas for the previous month;

(9) Perform audits of generators participating in the trading program to verify accuracy of metered production data;

(10) Allocate the RPS requirement to each retail entity in accordance with subsection (h) of this section; and

(11) Submit an annual report to the commission. The program administrator shall submit a report to the commission on or before May 15 of each calendar year. The report shall contain information pertaining to renewable energy power generators and retail entities. At a minimum, the report shall contain:

(A) the amount of existing and new renewable energy capacity in MW installed in the state by technology type, the owner/operator of each facility, the date each facility began to produce energy, the amount of energy generated in megawatt-hours (MWh) each quarter for all capacity participating in the trading program or that was retired from service; and

(B) a listing of all retail entities participating in the trading program, each retail entity's RPS requirement, the number of offsets used by each retail entity, the number of RECs retired by each retail entity, the number of compliance premiums retired by each retail entity, a listing of all retail entities that were in compliance with the RPS requirement, a listing of all retail entities that failed to comply with the RPS requirement, and the deficiency of each retail entity that failed to retire sufficient RECs or compliance premiums to meet its RPS requirement.

(h) Allocation of RPS requirement to retail entities. The program administrator shall allocate RPS requirements among retail entities. Any renewable capacity that is retired before January 1, 2015 or any capacity shortfalls that arise due to purchases of RECs from out-of-state facilities shall be replaced and incorporated into the allocation methodology set forth in this subsection. Any changes to the allocation methodology to reflect replacement capacity shall occur two compliance periods after the facility is retired or the capacity shortfall occurs. The program administrator shall use the following methodology to determine the total annual RPS requirement for a given year and the final RPS allocation for individual retail entities:

(1) The total statewide RPS requirement for each compliance period shall be calculated in terms of MWh and shall be equal to the applicable capacity requirement set forth in this paragraph multiplied by 8,760 hours per year, multiplied by the appropriate capacity conversion factor set forth in subsection (k) of this section. The renewable energy capacity requirements for the compliance period beginning January 1, of the year indicated shall be:

(A) 1,400 MW of new resources in 2006;

(B) 1,400 MW of new resources in 2007;

(C) 2,392 MW of new resources in 2008;

(D) 2,392 MW of new resources in 2009;

(E) 3,384MW of new resources in 2010;

(F) 3,384 MW of new resources in 2011;

(G) 4,376 MW of new resources in 2012;

(H) 4,376 MW of new resources in 2013;

(I) 5,000 MW of new resources in 2014; and

(J) 5,000 MW of new resources for each year after 2014.

(2) The final RPS allocation for an individual retail entity for a compliance period shall be calculated as follows:

(A) Beginning with the 2008 compliance period, prior to the preliminary RPS allocation each retail entity's total retail energy sales are reduced to exclude the consumption of customers that opt out in accordance with subsection (j) of this section. Each retail entity's preliminary RPS allocation is determined by dividing its total retail energy sales in Texas by the total retail sales in Texas of all retail entities, and multiplying that percentage by the total statewide RPS requirement for that compliance period.

(B) The adjusted RPS allocation for each retail entity that is entitled to an offset is determined by reducing its preliminary

RPS allocation by the offsets to which it qualifies, as determined under subsection (i) of this section, with the maximum reduction equal to the retail entity's preliminary RPS allocation. The total reduction for all retail entities is equal to the total usable offsets for that compliance period.

(C) Each retail entity's final RPS allocation for a compliance period shall be increased to recapture the total usable offsets calculated under subparagraph (B) of this paragraph. The additional RPS allocation shall be calculated by dividing the retail entity's preliminary RPS allocation by the total preliminary RPS allocation of all retail entities. This fraction shall be multiplied by the total usable offsets for that compliance period and this amount shall be added to the retail entity's adjusted RPS allocation to produce the retail entity's final RPS allocation for the compliance period.

(3) Concurrent with determining final individual RPS allocations for the current compliance period in accordance with this subsection, the program administrator shall recalculate the final RPS allocations for the previous compliance periods, taking into account corrections to retail sales resulting from resettlements. The difference between a retail entity's corrected final RPS allocation and its original final RPS allocation for the previous compliance periods shall be added to or subtracted from the retail entity's final RPS allocation for the current compliance period.

(i) Nomination and award of REC offsets.

(1) A REP, municipally-owned utility, G&T cooperative, distribution cooperative, or an affiliate of a REP, municipally-owned utility, or distribution cooperative, may apply offsets to meet all or a portion of its renewable energy purchase requirement, as calculated in subsection (h) of this section, only if those offsets were nominated in a filing with the commission by June 1, 2001.

(2) The program administrator shall award offsets consistent with the commission's actions to verify designations of REC offsets and with this section.

(3) REC offsets shall be equal to the average annual MWh output of an existing resource for the years 1991-2000 or the entire life of the existing resource, whichever is less.

(4) REC offsets qualify for use in a compliance period under subsection (h) of this section only to the extent that:

(A) The resource producing the REC offset has continuously since September 1, 1999 been owned by or its output has been committed under contract to a utility, municipally-owned utility, or cooperative (or successor in interest) nominating the resource under paragraph (1) of this subsection or, if the resource has been committed under a contract that expired after September 1, 1999 and before January 1, 2002, it was owned by or its output was committed under contract to a utility, municipally-owned utility, or cooperative on January 1, 2002; and

(B) The facility producing the REC offsets is operated and producing energy during the compliance period in a manner consistent with historic practice.

(5) If the production of energy from a facility that is eligible for an award of REC offsets ceases for any reason, or if the power purchase agreement with the facility's owner (or successor in interest) that is referred to in paragraph (4)(A) of this subsection has lapsed or is no longer in effect, the retail entity shall no longer be awarded REC offsets related to the facility.

(6) REC offsets shall not be traded.

(j) Opt-out notice.

(1) A customer receiving electrical service at transmission-level voltage who submits an opt-out notice to the commission for the applicable compliance period shall have its load excluded from the RPS calculation.

(2) An investor-owned utility that is subject to a renewable energy requirement under this section shall not collect costs attributable to the REC program from an eligible customer who has submitted an opt-out notice. An investor-owned utility whose rates include the cost of RECs shall file a tariff to implement this subsection, not later than 30 days after the effective date of this section.

(3) A customer opt-out notice must be filed in the commission-designated project number before the beginning of a compliance period for the notice to be effective for that period. Each opt-out notice must include the name of the individual customer opting out, the customer's ESI IDs, the retail entities serving those ESI IDs, and the term for which the notice is effective, which may not exceed two years. The customer opting out must also provide the information included in the opt-out notice directly to ERCOT and may request that ERCOT protect the customer's ESI ID and consumption as confidential information. For notices submitted for the 2008 compliance period, a customer may amend a notice to include this information not later than January 15, 2009, if its initial notice did not include the information. A customer may revoke a notice under this subsection at any time prior to the end of a compliance period by filing a letter in the designated project number and providing notice to ERCOT.

(k) Calculation of capacity conversion factor. The capacity conversion factor used by the program administrator to allocate credits to retail entities shall be calculated during the fourth quarter of each odd-numbered compliance year. The capacity conversion factor shall:

(1) Be based on actual generator performance data for the previous two years for all renewable resources in the trading program during that period for which at least 12 months of performance data are available.

(2) Represent a weighted average of generator performance; and

(3) Use all actual generator performance data that is available for each renewable resource, excluding data for testing periods.

(l) Production, transfer, and expiration of RECs. The program administrator shall administer a trading program for renewable energy credits in accordance with the requirements of this subsection.

(1) The owner of a renewable resource shall earn one REC when a MWh is metered at that renewable resource. The program administrator shall record the energy in metered MWh and credit the REC account of the renewable resource that generated the energy on a quarterly basis. Quarterly production shall be rounded to the nearest whole MWh, with fractions of 0.5 MWh or greater rounded up.

(2) The transfer of RECs between parties shall be effective only when the transfer is recorded by the program administrator.

(3) The program administrator shall require that RECs be adequately identified prior to recording a transfer and shall issue an acknowledgement of the transaction to parties upon provision of adequate information. At a minimum, the following information shall be provided:

(A) identification of the parties;

(B) REC serial number, REC issue date, and the renewable resource that produced the REC;

(C) the number of RECs to be transferred; and

(D) the transaction date.

(4) A retail entity shall surrender RECs to the program administrator for retirement from the market in order to meet its RPS requirement for a compliance period. The program administrator will document all REC retirements annually.

(5) On or after each April 1, the program administrator will retire RECs that have not been retired by retail entities and have reached the end of their compliance life.

(6) The program administrator may establish a procedure to ensure that the award, transfer, and retirement of credits are accurately recorded.

(7) The issue date of RECs created by a renewable energy resource shall coincide with the beginning of the compliance period (calendar year) in which the credits are generated. All RECs shall have a compliance life of three compliance periods, after which the program administrator will retire them from the trading program.

(8) Each REC that is not used in the compliance period in which it was created may be banked and is valid for the next two compliance periods.

(m) Target for renewable technologies other than wind power. In order to meet the target of at least 500 MW of the total installed renewable capacity after September 1, 2005, coming from a renewable energy technology other than a source using wind energy as set forth in subsection (a)(1) of this section, the program administrator shall award compliance premiums to certified REC generators other than those powered by wind that were installed and certified by the commission pursuant to subsection (o) of this section after September 1, 2005. A compliance premium is created in conjunction with a REC.

(1) For eligible non-wind renewable technologies, one compliance premium shall be awarded for each REC awarded for energy generated after December 31, 2007.

(2) Except as provided in this subsection, the award, retirement, trade, and registration of compliance premiums shall follow the requirements of subsections (d), (l) and (n) of this section.

(3) A compliance premium may be used by any entity toward its RPS requirement pursuant to subsection (h) of this section.

(4) The program administrator shall increase the statewide RPS requirement calculated for each compliance period pursuant to subsection (h)(1) of this section by the number of compliance premiums retired during the previous compliance period.

(n) Settlement process. The first quarter following the compliance period shall be the settlement period during which the following actions shall occur:

(1) By January 31, the program administrator will notify each retail entity of its total RPS requirement for the previous compliance period as determined pursuant to subsection (h) of this section.

(2) By March 31, each retail entity shall submit credits or compliance premiums to the program administrator from its account equivalent to its RPS requirement for the previous compliance period. If the retail entity does not submit sufficient credits or compliance premiums to satisfy its obligation, the retail entity is subject to the penalty provisions in subsection (p) of this section.

(3) The program administrator may request the commission to adjust the deadlines set forth in this section if changes to the ERCOT settlement calendar or other factors affect the availability of reliable retail sales data.

(o) Certification of renewable energy facilities. The commission shall certify all renewable facilities that will produce either REC offsets, RECs, or compliance premiums for sale in the trading program. To be awarded RECs, or REC offsets, or compliance premiums, a power generator must complete the certification process described in this subsection. The program administrator shall not award offsets, RECs, or compliance premiums for energy produced by a power generator before it has been certified by the commission.

(1) The designated representative of the generating facility shall file an application with the commission on a form approved by the commission for each renewable energy generation facility. At a minimum, the application shall include the location, owner, technology, and rated capacity of the facility and shall demonstrate that the facility meets the resource eligibility criteria in subsection (e) of this section. Any subsequent changes to the information in the application shall be filed with the commission within 30 days of such changes.

(2) No later than 30 days after the designated representative files the certification form with the commission, the commission shall inform both the program administrator and the designated representative whether the renewable facility has met the certification requirements. At that time, the commission shall either certify the renewable facility as eligible to receive RECs, offsets, or compliance premiums, or describe any insufficiencies to be remedied. If the application is contested, the time for acting is extended for such time as is necessary for commission action.

(3) Upon receiving notice of certification of new facilities, the program administrator shall create a REC account for the designated representative of the renewable resource.

(4) The commission or program administrator may make on-site visits to any certified facility, and the commission shall decertify any facility if it is not in compliance with the provisions of this section.

(5) A decertified renewable generator may not be awarded RECs. However, any RECs awarded by the program administrator and transferred to a retail entity prior to the decertification remain valid.

(p) Penalties and enforcement. If by April 1 of the year following a compliance period the program administrator determines that a retail entity has not retired sufficient credits or compliance premiums to satisfy its allocation, the retail entity shall be subject to an administrative penalty pursuant to PURA §15.023, of $50 per MWh that is deficient.

(q) Microgenerators and REC aggregators. A REC aggregator may manage the participation of multiple microgenerators in the REC trading program. The program administrator shall assign to the REC aggregator all RECs accrued by the microgenerators who are under a REC management contract with the REC aggregator.

(1) The microgenerator's units shall be installed and connected to the grid in compliance with P.U.C. Substantive Rules, applicable interconnection standards adopted pursuant to the P.U.C. Substantive Rules, and federal rules.

(2) Notwithstanding subsection (e)(3) of this section, a REC aggregator may use any of the following methods for reporting generation to the program administrator, as long as the same method is used for each microgenerator in an aggregation unit, as defined by the REC aggregator. A REC aggregator may have more than one aggregation and may choose any of the methods listed below for each aggregation unit.

(A) The REC aggregator may provide the program administrator with production data that is measured and verified by an electronic meter that meets ANSI C12 standards and that will be sep-

arate from the aggregator's billing meter for the service address and for which the billing data and the renewable energy data are separate and verifiable data. Such actual data shall be collected and transmitted within a reasonable time and shall be subject to verification by the program administrator. REC aggregators using this method shall be awarded one REC for every MWh generated.

(B) The REC aggregator may provide the program administrator with sufficient information for the program administrator to estimate with reasonable accuracy the output of each unit, based on known or observed information that correlates closely with the generation output. REC aggregators using this method shall be awarded one REC for every 1.25 MWh generated. After installing the unit, the certified technician shall provide the microgenerator, the REC aggregator, and the program administrator the information required by the program administrator pursuant to this paragraph (2) of this subsection.

(C) A generating unit may have a meter that transmits actual generation data to the program administrator using applicable protocols and procedures. Such protocols and procedures shall require that actual data be collected and transmitted within a reasonable time. REC aggregators using this method shall be awarded one REC for every MWh generated.

(3) REC aggregators shall register with the commission and the program administrator and also register to participate in the REC trading program.

(4) A microgenerator participating in the REC trading program individually without the assistance of a REC aggregator shall comply with the requirements of this subsection.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on December 18, 2008.

TRD-200806560
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Effective date: January 7, 2009
Proposal publication date: September 12, 2008
For further information, please call: (512) 936-7223

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TITLE 22. EXAMINING BOARDS

PART 3. TEXAS BOARD OF CHIROPRACTIC EXAMINERS

CHAPTER 80. PROFESSIONAL CONDUCT

22 TAC §80.11

The Texas Board of Chiropractic Examiners (Board) adopts new §80.11, concerning a Code of Ethics. The new rule is adopted to address a gap in the Board's rules by codifying a standard of ethics and professional responsibility. The rule is modeled on the Code of Ethics of the American Chiropractic Association.

The rule is adopted with changes to the proposed text as published in the October 3, 2008, issue of the *Texas Register* (33 TexReg 8278).

The Board received one comment on the rule from an individual.

The commenter asked whether §80.11(a) might limit a patient's ability to complain after they have signed an informed consent. The Board does not read this rule that way. This rule would only require that a licensee employ their best good faith effort to provide a patient with information and attempt to see that a patient understands a proposed chiropractic treatment. No change was made in response to this comment.

The commenter asked whether §80.11(a) could be construed to bind the patient financially to have consented to all services provided. This rule would not apply to financial commitments. The Board would assume that a licensee would have already discussed financial commitments prior to discussing a proposed treatment. No change was made in response to this comment.

The Board did make one non-substantive and editorial change to §80.11(a), changing it to read "informed choice with regard to proposed chiropractic treatment" as opposed to "in regard."

The commenter asked whether §80.11(b) would impose a dangerous and time-consuming burden on licensees by potentially requiring that they consult with every other health care provider seen by a patient where there might be some relationship between the treatment provided by the licensee and the health care services from another provider. The commenter also suggested that it would be better to give licensees some discretion as to when such consultations are warranted. The Board disagrees that the rule as proposed would have imposed a burden as described by the commenter. However, the Board does agree with the comment that licensees should be allowed more discretion regarding such consultations. In response to these comments, the Board has modified the rule to make it a more narrow recommendation rather than a mandatory requirement. The revised rule reads as follows: "Licensees should willingly seek consultation with other health care professionals when such consultation would benefit their patients and when such consultation is considered to be appropriate."

The commenter also asked whether, in a situation where a patient requests the consultation described under §80.11(b), a licensee would have an absolute duty to perform the consultation. Yes, under the rule as proposed, a licensee would be expected to make a good faith effort at consultation when requested by a patient. However, as discussed above the Board has modified the rule to allow licensees more discretion. No further change was made in response to this comment.

The commenter asked whether §80.11(c) would require that a licensee have a staff member of the same sex as the patient in the exam room. This rule requires only that a licensee not deny treatment as a result of discrimination. It does not establish rules on how treatment should be provided. No change was made in response to this comment.

The commenter also asked whether, under §80.11(c), a licensee could potentially be subject to a gender discrimination complaint if they denied treatment to a female patient because they did not have a female staff person who could observe the treatment. Where there is a reason to have female staff present for the treatment of female patients, such as an order from the Board or clinic policy, then denying treatment at time when female staff cannot be present would not be a basis for a discrimination claim. No change was made in response to this comment.

The commenter suggested that §80.11(d) is overly broad and does not clarify what is expected or required of a doctor. The

Board disagrees. This rule sets the expectation that licensees should recognize their responsibility to promote public health. No change was made in response to this comment.

The commenter also suggested that §80.11(d) should describe the type of collaboration/cooperation that would be required. This rule sets the general expectation that licensees should recognize their responsibility to promote public health. The Board does not see that it is necessary to describe how a licensee might collaborate or cooperate with others in the promotion of public health. No change was made in response to this comment.

The commenter also suggested that the mandate for collaboration under §80.11(d) could increase health care costs. This rule addresses a licensee's responsibilities to the profession and the community rather than for patient care. In the absence of more specific information as to how this rule could potentially increase costs, the Board does not see how it could affect the health care costs for patients. No change was made in response to this comment.

The commenter suggested that the language of proposed §80.11(e) is unconstitutionally vague in that it fails to adequately define the conduct that might give the appearance of professional impropriety or might be deemed to cause a detriment to the profession; specific criteria is needed. Upon further reflection, the Board agrees with this comment. The Board has rules that prohibit specific unprofessional conduct, such as the conduct described under §75.1 of this title, relating to grossly unprofessional conduct. Proposed §80.11(e) has been deleted in response to this comment.

The commenter suggested that §80.11(f) is vague as to what it requires of a licensee or what obligations it imposes. The purpose of this rule is to call attention to the responsibility of licensees to assist in the advancement of chiropractic in Texas through the education and training of others. No change was made in response to this comment.

This new rule is adopted under Texas Occupations Code §201.152, relating to rules, which authorizes the Board to adopt rules necessary to regulate the practice of chiropractic.

No other statutes, articles, or codes are affected by the adopted rule.

§80.11. Code of Ethics.

(a) Licensees shall employ their best good faith efforts to provide information and facilitate understanding to enable the patient to make an informed choice with regard to proposed chiropractic treatment. Licensees shall allow the patient to make his or her own determination on such treatment.

(b) Licensees should willingly seek consultation with other health care professionals when such consultation would benefit their patients and when such consultation is considered appropriate.

(c) Licensees shall not discriminate as to which patients they choose to serve on the basis of race, religion, ethnicity, nationality, creed, gender, handicap or sexual preference.

(d) Licensees shall conduct themselves as members of a learned profession and as members of the greater healthcare community dedicated to the promotion of health, the prevention of illness and the alleviation of suffering. As such, licensees should collaborate and cooperate with other health care professionals to protect and enhance the health of the public with the goals of reducing morbidity, increasing functional capacity, increasing the longevity of the U.S. population and reducing health care costs.

(e) Licensees shall recognize their obligation to help others acquire knowledge and skill in the practice of the profession. They shall maintain the highest standards of scholarship, education and training in the accurate and full dissemination of information and ideas.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on December 19, 2008.

TRD-200806624
Glenn Parker
Executive Director
Texas Board of Chiropractic Examiners
Effective date: January 8, 2009
Proposal publication date: October 3, 2008
For further information, please call: (512) 305-6901

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PART 23. TEXAS REAL ESTATE COMMISSION

CHAPTER 534. GENERAL ADMINISTRATION

22 TAC §534.2

The Texas Real Estate Commission (TREC) adopts amendments to 22 TAC §534.2, concerning Processing Fees for Dishonored Payments, with one change to the published text as proposed in the November 14, 2008, issue of the *Texas Register* (33 TexReg 9194).

The change from the amendments as proposed is as follows: the remaining reference to a "check" in the second sentence of subsection (a) is changed to read "payment." The revision to the rule as adopted does not change the nature or scope so much that it could be deemed a different rule. The rule as adopted does not affect individuals other than those contemplated by the rule as proposed. The rule as adopted does not impose more onerous requirements than the proposed rule and does not materially alter the issues raised in the proposed rule. The change reflects a non-substantive variation from the proposed rule to clarify its intent and to improve readability.

The amendments to §534.2 change the title to the section and amend the rule to clarify that the processing fee for dishonored payments does not only apply only to dishonored checks but to any other types of dishonored payments such as a charge back to a credit card.

The reasoned justification for the amendments is consistency with how the agency treats dishonored payments of all kinds whether they are dishonored checks or credit card charge backs.

The Commission received one comment on the proposed amendment, as follows.

Comment: One commenter suggested changing the remaining reference to a "check" to say "payment," consistent with the other proposed changes to the rule.

Response: In response to the comment, the Commission changed "check" to "payment" in the second sentence.

The amendments are adopted under Texas Occupations Code, §1101.151, which authorizes the Texas Real Estate Commission to adopt and enforce rules necessary to administer Chapter 1101; and to establish standards of conduct and ethics for its licensees to fulfill the purposes of Chapter 1101 and ensure compliance with Chapter 1101.

The statutes affected by the adoption of the amendments are Texas Occupations Code, Chapters 1101 and 1102. No other statute, code or article is affected by the adoption of the amendments.

§534.2. Processing Fees for Dishonored Payments.

(a) If a payment to the commission is dishonored by a payor, the commission shall charge a fee of $25 to the drawer or endorser for processing the dishonored payment. The commission shall notify the drawer or endorser of the fee by sending a request for payment of the dishonored payment and the processing fee by certified mail to the last known business address of the person as shown in the records of the commission. If the commission has sent a request for payment in accordance with the provisions of this section, the failure of the drawer or endorser to pay the processing fee within 15 days after the commission has mailed the request is a violation of this section.

(b) Collection of the fee imposed under this section does not preclude the commission from proceeding under Texas Occupations Code, §1101.652(a)(4), against a licensee who has within a reasonable time failed to make good a payment issued to the commission.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on December 18, 2008.

TRD-200806557
Devon V. Bijansky
Assistant General Counsel
Texas Real Estate Commission
Effective date: January 7, 2009
Proposal publication date: November 14, 2008
For further information, please call: (512) 465-3900

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CHAPTER 535. GENERAL PROVISIONS
SUBCHAPTER E. REQUIREMENTS FOR LICENSURE

22 TAC §535.51

The Texas Real Estate Commission (TREC) adopts amendments to §535.51, concerning General Requirements, and adopts by reference ten revised application forms without changes to the proposed text as published in the November 14, 2008, issue of the *Texas Register* (33 TexReg 9194) and will not be republished. The amendments adopt by reference the ten revised forms to clarify and, when possible, simplify certain licensure requirements for applicants and renewing licensees. All ten forms revise the language of the question regarding the criminal background of the applicant, designated manager, or designated officer to clarify that deferred adjudication must be disclosed to the Commission. Form BLC-6, Application for a Real Estate Broker License by a Corporation, is also updated to reflect current terminology regarding corporate records as amended by the Texas Business Organizations Code. Form BLR-9, Application for Late Renewal of a Real Estate Broker License, is also updated to simplify the fee structure by eliminating a separate category of fees for expired licensees who are applying for late renewal after the license expired under a previous fee structure. Form BLRC-6, Application for Late Renewal of Real Estate Broker License by a Corporation, is also updated both to incorporate the corporate terminology changes of form BLC-6 and to eliminate the separate category of fees as in form BLR-9. Form SLR-10, Application for Late Renewal of Real Estate Salesperson License, is also updated to eliminate the separate category of fees as in form BLR-9. Form BLLLC-6, Application for Real Estate Broker License by a Limited Liability Company, is also updated to reflect current terminology regarding records of limited liability companies as amended by the Texas Business Organizations Code. Form BLRLLC-6, Application for Late Renewal of a Real Estate Broker License by a Limited Liability Company, is also updated both to incorporate the limited liability company terminology changes of form BLLLC-6 and to eliminate the separate category of fees as in form BLR-9.

The reasoned justification for the rule as adopted is greater clarity for applicants and renewing licensees regarding the fees, required documentation, and questions relating to honesty, integrity, and trustworthiness.

No comments were received regarding the amendments as proposed.

The amendments are adopted under Texas Occupations Code, §1101.151, which authorizes the Texas Real Estate Commission to make and enforce all rules and regulations necessary for the performance of its duties and to establish standards of conduct and ethics for its licensees and certificate holders in keeping with the purpose and intent of the Act to ensure compliance with the provisions of the Act.

The statutes affected by this adoption are Texas Occupations Code, Chapter 1101. No other statute, code or article is affected by the amendments.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on December 18, 2008.

TRD-200806558
Devon V. Bijansky
Assistant General Counsel
Texas Real Estate Commission
Effective date: January 7, 2009
Proposal publication date: November 14, 2008
For further information, please call: (512) 465-3900

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22 TAC §535.52

The Texas Real Estate Commission (TREC) adopts amendments to 22 TAC §535.52, concerning Individuals, without changes to the published text as proposed in the November 14,

2008, issue of the *Texas Register* (33 TexReg 9195) and will not be republished.

The amendments to §535.52 clarify the conduct that the commission believes tends to demonstrate that an applicant for a license or registration with the commission does not meet the requisite honesty, trustworthiness, and integrity required by Texas Occupations Code Chapters 1101 and 1102.

The reasoned justification for the amendments is consistent application of statutory requirements for application for a license or registration filed with the commission.

No comments were received on the amendment as proposed.

The amendments are adopted under Texas Occupations Code, §1101.151, which authorizes the Texas Real Estate Commission to adopt and enforce rules necessary to administer Chapter 1101; and to establish standards of conduct and ethics for its licensees to fulfill the purposes of Chapter 1101 and ensure compliance with Chapter 1101.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on December 18, 2008.

TRD-200806559
Devon V. Bijansky
Assistant General Counsel
Texas Real Estate Commission
Effective date: January 7, 2009
Proposal publication date: November 14, 2008
For further information, please call: (512) 465-3900

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SUBCHAPTER T. EASEMENT OR RIGHT-OF-WAY AGENTS

22 TAC §535.400

The Texas Real Estate Commission (TREC) adopts amendments to §535.400, concerning Registration of Easement or Right-of-Way Agents, and adopts by reference two revised application forms. Section 535.400 is adopted without changes to the proposed text as published in the November 14, 2008, issue of the *Texas Register* (33 TexReg 9196) but with changes to one of the forms submitted to the Texas Register; therefore, the text of the rule will be republished. Form ERW 1-3, Application For Easement Or Right-of-Way Agent Registration For An Individual, has been changed from the proposed form to reflect the correction of three typos and the updated acronym and address for the Texas Guaranteed Student Loan Corporation. The revisions to the form as adopted does not change the nature or scope so much that it could be deemed a different form. The form as adopted does not affect individuals other than those contemplated by the form as proposed. The form as adopted does not impose more onerous requirements than the proposed version and does not materially alter the issues raised in the proposed form. Changes in the adopted form reflects non-substantive variations from the proposed form to clarify the intent and improve style and readability.

The amendments are adopted to clarify certain licensure requirements for applicants. Both forms revise the language of the question regarding the criminal background of the applicant, designated manager, or designated officer to clarify that deferred adjudication must be disclosed to the Commission. Form ERW 2-3, Application For Easement Or Right-of-Way Agent Registration For A Business, is also updated to reflect current terminology regarding corporate records as amended by the Texas Business Organizations Code.

The reasoned justification for the rule as adopted is greater clarity for applicants regarding required fees and supporting documentation.

No comments were received regarding the amendments as proposed.

The amendments are adopted under Texas Occupations Code, §1101.151, which authorizes the Texas Real Estate Commission to make and enforce all rules and regulations necessary for the performance of its duties and to establish standards of conduct and ethics for its licensees and certificate holders in keeping with the purpose and intent of the Act to ensure compliance with the provisions of the Act.

The statute affected by the adopted amendments is Texas Occupations Code, Chapter 1101. No other statute, code or article is affected by the adopted amendments.

§535.400. Registration of Easement or Right-of-Way Agents.

(a) The Texas Real Estate Commission adopts by reference the following forms approved by the Texas Real Estate Commission in 2000. These forms are published by and available from the Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711-2188.

(1) ERW 1-3, Application For Easement Or Right-of-Way Agent Registration For An Individual; and

(2) ERW 2-3, Application For Easement Or Right-of-Way Agent Registration For A Business.

(b) An individual desiring to be registered by the commission as an easement or right-of-way agent must file form ERW 1-3 with the commission. If the applicant is a business, the applicant must file form ERW 2-3. All applicants must submit the applicable fees set forth in The Real Estate License Act, Texas Occupations Code, Chapter 1101, (the Act). The commission will not accept an application which has been submitted without the correct filing fees or which has been submitted in pencil. A person also may apply for registration by accessing the commission's Internet web site, entering the required information on the application form and paying the appropriate fee in accordance with the instructions provided at the site by the commission. If the person is an individual, the person must provide the commission with the person's photograph and signature prior to issuance of a registration certificate. The person may provide the photograph and signature prior to the submission of an electronic application. If the applicant does not complete the application process as required by this subsection, the commission shall terminate the application.

(c) After the commission has accepted an application for filing, the commission shall process the application and promptly issue a certificate of registration, request any information required to complete the registration, or advise the applicant that the application has been terminated or disapproved, as the case may be.

(d) The commission shall assign a registration number to each registrant and shall provide each registrant with a certificate of registration. Each registration issued by the commission is valid until the last day of the month one year from the day the registration was issued. Each registrant shall display the certificate of registration issued by the commission in a prominent location in the registrant's place of

business, as required by the Act, §1101.507. If the registrant maintains more than one place of business, the registrant shall display either the certificate or a copy of the certificate in each place of business.

(e) The commission may terminate an application with written notice to the applicant for failure to submit information or documentation within 60 days after the commission makes written request for the information or documentation.

(f) The commission may disapprove an application for registration with written notice to the applicant if the applicant has been convicted of a criminal offense which is grounds for disapproval of an application under §541.1 of this title (relating to Criminal Offense Guidelines) or the applicant has engaged in conduct prohibited by the Act. Provided a timely written request for a hearing is made by the applicant in accordance with the Act, §1101.364, an applicant whose application for registration has been disapproved is entitled to a hearing. The hearing on the application will be conducted in accordance with the provisions of the Act, §1101.364, and Chapter 533 of this title (relating to Practice and Procedure).

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on December 18, 2008.

TRD-200806562
Devon V. Bijansky
Assistant General Counsel
Texas Real Estate Commission
Effective date: January 7, 2009
Proposal publication date: November 14, 2008
For further information, please call: (512) 465-3900

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CHAPTER 537. PROFESSIONAL AGREEMENTS AND STANDARD CONTRACTS

22 TAC §537.51, §537.52

The Texas Real Estate Commission (TREC) adopts new §537.51, concerning Standard Contract Form TREC No. 44-0, and new §537.52, concerning Standard Contract Form TREC No. 45-0, without changes to the proposed text as published in the November 14, 2008, issue of the *Texas Register* (33 TexReg 9197) but with changes to the forms as submitted to the Texas Register; therefore, the text of the rules will be republished.

New §537.51 adopts by reference a new TREC addendum for reservation of oil, gas, and other minerals. The addendum would be used in situations where a seller in a real estate transaction wishes to reserve all or an identified percentage interest in the mineral estate owned by the seller, as defined in the addendum.

New §537.52 adopts by reference a new TREC short sale addendum. The addendum would be used in transactions where the seller requires the consent of the lienholder to sell the property and the lienholder agrees to accept the seller's net proceeds in full satisfaction of seller's liability under the mortgage loan.

The changes to the forms as adopted from those that were originally proposed are detailed below and include the following: The Commission made typographical corrections to the forms adopted by reference and made other changes to the text of the forms in response to comments and further review and recommendation by staff and the Broker Lawyer Committee. A number of comments did not result in changes to the text of the forms. All comments regarding this adoption, including any not specifically referenced herein, were fully considered by the Commission and the Broker Lawyer Committee.

The revisions to the forms as adopted do not change the nature or scope so much that they could be deemed different forms. The forms as adopted do not affect individuals other than those contemplated by the forms as proposed. The forms as adopted do not impose more onerous requirements than the proposed versions and do not materially alter the issues raised in the proposed forms. Changes in the forms adopted by reference reflect non-substantive variations from the proposed rules and forms to clarify their intent and improve style and readability.

The reasoned justification for the amendments to the rules and contract forms adopted by reference is to maintain consistency, reduce controversy and misunderstanding, reduce redundancy, and address significant new issues relative to real estate contract forms.

The contract forms are published by TREC and available at the TREC web site (www.trec.state.tx.us) or at the Texas Real Estate Commission, P.O. Box 12188, 1101 Camino La Costa, Austin, Texas 78711-2188. Texas real estate licensees are generally required to use forms promulgated by TREC when negotiating contacts for the sale of real property. The two new forms may be used on a voluntary basis upon adoption; licensees will be required to use the forms on a mandatory basis as of March 1, 2009. These forms are drafted by the Texas Real Estate Broker-Lawyer Committee, an advisory body consisting of six attorneys appointed by the President of the State Bar of Texas, six brokers appointed by TREC, and a public member appointed by the governor.

Drafts of the contract forms were released for comment and displayed on the TREC web site during the notice and comment period after posting in the *Texas Register*. Approximately 7 comments were received during the notice and comment period

The comments and Commission responses to those comments are summarized as follows.

Comment: One commenter suggested addressing the conveyance or reservation of surface substances such as sand, dirt, gravel, iron ore, lignite and coal in the mineral rights addendum.

Response: The Commission respectfully disagrees with the suggestion as the primary purpose of the addendum is to address the conveyance and reservation of the mineral estate and surface rights related thereto. If the conveyance or reservation of surface substances is at issue in a real estate transaction, licensees should advise the parties to discuss the matter with an attorney.

Comment: One commenter suggested adding another check box in paragraph B of the mineral rights addendum for situations in which the seller is conveying all of the mineral estate owned by the seller.

Response: The Commission partially agrees with the commenter and in response, has moved the note which states in part that "The Mineral Estate owned by Seller, if any, will be conveyed unless reserved" from the bottom of the addendum to the beginning of paragraph B to emphasize the statement rather than adding another checkbox.

Comment: Two commenters suggested adding a provision to the mineral rights addendum to clarify that, in situations where the seller owns only part of the mineral estate, the percentage reserved in paragraph B(2) is only a percentage of the part interest owned by the seller and not a percentage of the entire mineral estate.

Response: The Commission agrees with the commenters and added the following note at the end of paragraph B(2): *If Seller does not own all of the Mineral Estate, Seller reserves only this percentage of Seller's interest.*

Comment: Two commenters suggested adding another paragraph to the mineral rights addendum to address situations in which the seller may lease the mineral estate and keep the bonus after execution of the contract.

Response: The commission respectfully disagrees with the commenters as paragraph 10 of the contract promises delivery of the property at closing in its present condition.

Comment: One commenter suggested changing the phrase "provide evidence to" in the first sentence of paragraph D of the short sale addendum to "notify."

Response: The Commission agrees with the commenter and has changed the addendum as recommended.

Comment: Two commenters suggested changing paragraph F of the short sale addendum regarding the time period in which the buyer may terminate the contract under the option period in paragraph 23 of the contract.

Response: In response to the commenters, the Commission has added "under Paragraph 23" to the end of paragraph F to clarify that the unrestricted right to terminate the contract is pursuant to paragraph 23 of the contract.

Comment: One commenter suggested changing paragraph D of the short sale addendum to provide that instead of the contract terminating if the seller fails to obtain the lienholders consent before the specified date, the buyer may terminate the contract by notifying the seller, thereby putting the burden on the buyer to notify the seller that the contract is terminated rather than the contract automatically terminating under that condition.

Response: The Commission respectfully disagrees with the commenter as the buyer may easily amend the contract if in fact the buyer wishes to extend the deadline for the seller to provide evidence of the lienholder's consent.

Comment: Two commenters suggested adding the following three sentences to further clarify the existing proposed provisions of the short sale addendum: "Seller shall apply promptly for and make every reasonable effort to obtain Lienholder's Consent and Agreement, and shall furnish all information and documents required by the lienholder. Seller shall promptly notify Buyer of any lienholder's refusal to provide or withdrawal of a Lienholder's Consent and Agreement. Seller authorizes any lienholder to furnish to Buyer or Buyer's representatives information relating to the status of the request for a Lienholder's Consent and Agreement.

Response: The Commission agrees with the suggestions and added the sentence requiring the seller to promptly obtain the lienholder's consent to paragraph C. The Commission added the sentence requiring seller to promptly notify the buyer of the lienholder's refusal or withdrawal to paragraph E. The Commission added the sentence authorizing the lienholder to furnish information to the buyer as a new paragraph H and moved paragraph H of the proposed addendum to new paragraph I.

The new rules are adopted under Texas Occupations Code, §1101.151, which authorizes the Texas Real Estate Commission to adopt and enforce rules necessary to administer Chapter 1101; and to establish standards of conduct and ethics for its licensees to fulfill the purposes of Chapter 1101 and ensure compliance with Chapter 1101.

The statute affected by the adoption of the new rules is Texas Occupations Code, Chapter 1101. No other statute, code or article is affected by the new rules.

§537.51. Standard Contract Form TREC No. 44-0.

The Texas Real Estate Commission adopts by reference standard contract form TREC No. 44-0 approved by the Texas Real Estate Commission in 2008 for use as an addendum to be added to promulgated forms of contacts for the reservation of oil, gas, and other minerals. This document is published by and available from the Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711-2188, www.trec.state.tx.us.

§537.52. Standard Contract Form TREC No. 45-0.

The Texas Real Estate Commission adopts by reference standard contract form TREC No. 45-0 approved by the Texas Real Estate Commission in 2008 for use as an addendum to be added to promulgated forms of contracts in the short sale of property. This document is published by and available from the Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711-2188, www.trec.state.tx.us.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on December 18, 2008.

TRD-200806565
Devon V. Bijansky
Assistant General Counsel
Texas Real Estate Commission
Effective date: March 1, 2009
Proposal publication date: November 14, 2008
For further information, please call: (512) 465-3900

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CHAPTER 541. RULES RELATING TO THE PROVISIONS OF TEXAS OCCUPATIONS CODE, CHAPTER 53

22 TAC §541.1

The Texas Real Estate Commission (TREC) adopts amendments to 22 TAC §541.1 concerning Criminal Offense Guidelines without changes to the published text as proposed in the November 14, 2008, issue of the *Texas Register* (33 TexReg 9197) and will not be republished.

The amendments to §541.1 clarify the types of criminal offenses that the commission believes relate to the duties and responsibilities of a real estate broker, salesperson, easement or right-of-way agent, professional inspector, real estate inspector or apprentice inspector in that the offenses tend to demonstrate the

person's inability to represent the interest of another with honesty, trustworthiness and integrity required by Texas Occupations Code Chapters 1101 and 1102.

The reasoned justification for the amendments is consistent application of criminal offense guidelines.

No comments were received on the amendment as proposed.

The amendments are adopted under Texas Occupations Code, §1101.151, which authorizes the Texas Real Estate Commission to adopt and enforce rules necessary to administer Chapter 1101; and to establish standards of conduct and ethics for its licensees to fulfill the purposes of Chapter 1101 and ensure compliance with Chapter 1101.

The statutes affected by the adoption of the amendments are Texas Occupations Code, Chapters 1101 and 1102. No other statute, code or article is affected by the adoption of the amendments.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on December 18, 2008.

TRD-200806566
Loretta R. DeHay
Assistant Administrator and General Counsel
Texas Real Estate Commission
Effective date: January 7, 2009
Proposal publication date: November 14, 2008
For further information, please call: (512) 465-3900

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PART 29. TEXAS BOARD OF PROFESSIONAL LAND SURVEYING

CHAPTER 661. GENERAL RULES OF PROCEDURES AND PRACTICES

SUBCHAPTER D. APPLICATIONS, EXAMINATIONS, AND LICENSING

22 TAC §661.44

The Texas Board of Professional Land Surveying (TBPLS) adopts an amendment to §661.44, concerning rejected applications. The amendment is adopted with changes to the proposed text as published in the November 7, 2008, issue of the *Texas Register* (33 TexReg 9047) and will be republished.

The amendment will clarify Board policy by adding deadline dates to receipt of information lacking in rejected applications. The changes made to the published text are to correct punctuation as directed by our legal representative.

No comments were received regarding adoption of this amendment.

The amendment is adopted pursuant to §1071.151, Title 6, Occupations Code, Subtitle C, which authorizes the Board to adopt and enforce reasonable and necessary rules to perform its duties.

§661.44. Rejections.

Should the board reject the application of any applicant, the fee accompanying the application will be retained by the board. If an application is rejected for any reason, the applicant will be notified by first class mail. The applicant may thereafter file with the board any further evidence or reason to support a claim for reconsideration on or before the next application deadline date (§661.41(b) of this title relating to Applications), either July 15 or January 15. It is the policy and intention of the board to give a rejected applicant every reasonable opportunity to support a claim for reconsideration and to consider such evidence as may have been omitted from or overlooked in the original application. An applicant may timely apply for a hearing pursuant to Title 2, Occupations Code, Chapter 53.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on December 18, 2008.

TRD-200806579
Sandy Smith
Executive Director
Texas Board of Professional Land Surveying
Effective date: January 7, 2009
Proposal publication date: November 7, 2008
For further information, please call: (512) 239-5263

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22 TAC §661.45

The Texas Board of Professional Land Surveying (TBPLS) adopts an amendment to §661.45, concerning examinations. The amendment is adopted without changes to the proposed text as published in the November 7, 2008, issue of the *Texas Register* (33 TexReg 9048) and will not be republished.

The amendment will clarify Board policy for examination candidates that have been called to active duty by the military.

No comments were received regarding adoption of this amendment.

The amendment is adopted pursuant to §1071.151, Title 6, Occupations Code, Subtitle C, which authorizes the Board to adopt and enforce reasonable and necessary rules to perform its duties.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on December 18, 2008.

TRD-200806582
Sandy Smith
Executive Director
Texas Board of Professional Land Surveying
Effective date: January 7, 2009
Proposal publication date: November 7, 2008
For further information, please call: (512) 239-5263

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22 TAC §661.53

The Texas Board of Professional Land Surveying (TBPLS) adopts §661.53, concerning exemptions from penalty regarding late renewals. The new section is adopted without changes to the proposed text as published in the November 7, 2008, issue of the *Texas Register* (33 TexReg 9048) and will not be republished.

The new section will add language to comply with §55.002 (Exemption From Penalty for Failure to Renew License) of Occupation Code Chapter 55 (Renewal of License While on Military Duty).

No comments were received regarding adoption of this new section.

The new section is adopted pursuant to §1071.151, Title 6, Occupations Code, Subtitle C, which authorizes the Board to adopt and enforce reasonable and necessary rules to perform its duties.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on December 18, 2008.

TRD-200806584
Sandy Smith
Executive Director
Texas Board of Professional Land Surveying
Effective date: January 7, 2009
Proposal publication date: November 7, 2008
For further information, please call: (512) 239-5263

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CHAPTER 664. CONTINUING EDUCATION

22 TAC §664.4

The Texas Board of Professional Land Surveying (TBPLS) adopts an amendment to §664.4, concerning types of acceptable continuing education. The amendment is adopted without changes to the proposed text as published in the November 7, 2008, issue of the *Texas Register* (33 TexReg 9049) and will not be republished

The amendment will clarify Board policy regarding authorship of technical papers in professional land surveying publications.

No comments were received regarding adoption of this amendment.

The amendment is adopted pursuant to §1071.151, Title 6, Occupations Code, Subtitle C, which authorizes the Board to adopt and enforce reasonable and necessary rules to perform its duties.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on December 18, 2008.

TRD-200806580
Sandy Smith
Executive Director
Texas Board of Professional Land Surveying
Effective date: January 7, 2009
Proposal publication date: November 7, 2008
For further information, please call: (512) 239-5263

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22 TAC §664.7

The Texas Board of Professional Land Surveying (TBPLS) adopts an amendment to §664.7, concerning determining the number of credit hours for continuing education. The amendment is adopted without changes to the proposed text as published in the November 7, 2008, issue of the *Texas Register* (33 TexReg 9409) and will not be republished.

The amendment will clarify the number of hours a registrant may earn for authorship of a technical paper in an approved professional land surveying publication.

No comments were received regarding adoption of this amendment.

The amendment is adopted pursuant to §1071.151, Title 6, Occupations Code, Subtitle C, which authorizes the Board to adopt and enforce reasonable and necessary rules to perform its duties.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on December 18, 2008.

TRD-200806581
Sandy Smith
Executive Director
Texas Board of Professional Land Surveying
Effective date: January 7, 2009
Proposal publication date: November 7, 2008
For further information, please call: (512) 239-5263

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22 TAC §664.13

The Texas Board of Professional Land Surveying (TBPLS) adopts new §664.13, concerning exemptions from the requirements to obtain continuing education. The new section is adopted with changes to the proposed text as published in the November 7, 2008, issue of the *Texas Register* (33 TexReg 9050) and will be republished.

The new section will add language to comply with §55.003 (Extension of Certain Deadlines for Active Duty Military Personnel) of Occupation Code Chapter 55 (Renewal of License While on Military Duty). The only change made to the proposal was a punctuation correction that our legal counsel requested be made.

No comments were received regarding adoption of this section.

The new section is adopted pursuant to §1071.151, Title 6, Occupations Code, Subtitle C, which authorizes the Board to adopt and enforce reasonable and necessary rules to perform its duties.

§664.13. Exemptions.

A Registrant may be exempt from the professional development educational requirements for one of the following reasons:

(1) New Registrant by way of examination shall be exempt for their first renewal period.

(2) A license holder serving on active duty and deployed outside Texas in or for the military service of the United States for a period of time exceeding one hundred twenty (120) consecutive days in a year shall be exempt from obtaining the professional development hours required during that year.

(3) Registrants who list their status as "Inactive."

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on December 18, 2008.

TRD-200806583
Sandy Smith
Executive Director
Texas Board of Professional Land Surveying
Effective date: January 7, 2009
Proposal publication date: November 7, 2008
For further information, please call: (512) 239-5263

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TITLE 37. PUBLIC SAFETY AND CORRECTIONS

PART 1. TEXAS DEPARTMENT OF PUBLIC SAFETY

CHAPTER 18. DRIVER EDUCATION SUBCHAPTER A. COMMERCIAL DRIVER TRAINING SCHOOL TESTING AND ISSUANCE OF INSTRUCTION PERMITS

37 TAC §18.1, §18.4

The Texas Department of Public Safety adopts amendments to Chapter 18, §18.1 and §18.4 concerning Driver Education without changes to the proposed text as published in the October 10, 2008, issue of the *Texas Register* (33 TexReg 8482).

The amendment to §18.1(6) replaces "four" copies of the Texas Driver Education Certificate (form DE-964) with "three" copies. This change is necessary due to a form change initiated by the Texas Education Agency that now consists of three copies.

The amendment to §18.4(b) adds the language "or electronic records of the exam" in order to allow commercial driver training schools to administer and/or maintain an electronic record of the actual Class C Road Signs and Road Rules exam as part of the permanent student instruction record. A second amendment to §18.4(b) adds "for a period of three years from the date of the exam" in order to specify the retention schedule for commercial driver training schools to maintain exam records in the same manner as the Texas Education Agency rule, Chapter 176, §176.1016 Records, which states the schools shall maintain all student records for at least three years from the date of the exam.

No comments were received regarding adoption of the amendments.

The amendments are adopted pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the Department's work; and Texas Transportation Code, §521.165.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on December 19, 2008.

TRD-200806621
Stanley E. Clark
Director
Texas Department of Public Safety
Effective date: January 8, 2009
Proposal publication date: October 10, 2008
For further information, please call: (512) 424-2135

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CHAPTER 35. PRIVATE SECURITY SUBCHAPTER I. COMMISSIONED SECURITY OFFICERS

37 TAC §35.143

The Texas Department of Public Safety adopts the repeal of §35.143, concerning Drug Testing Required for Commissioned Security Officers, without changes to the proposed text as published in the October 31, 2008, issue of the *Texas Register* (33 TexReg 8893).

The repeal of §35.143 is necessary due to the simultaneous filing of a new §35.143 which will simplify the administrative requirements placed on licensees relating to monitoring or controlling employee drug use.

No comments were received regarding adoption of the repeal.

The repeal is adopted pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work; and Texas Occupations Code, §1702.061(b), which authorizes the department to adopt rules to administer this chapter.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on December 19, 2008.

TRD-200806622
Stanley E. Clark
Director
Texas Department of Public Safety
Effective date: January 8, 2009
Proposal publication date: October 31, 2008
For further information, please call: (512) 424-2135

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37 TAC §35.143

The Texas Department of Public Safety adopts new §35.143, concerning Drug-Free Workplace Policy Requirement, without changes to the proposed text as published in the October 31, 2008, issue of the *Texas Register* (33 TexReg 8894).

Adoption of new §35.143 is necessary in order to simplify the administrative requirements placed on licensees relating to monitoring or controlling employee drug use and is being filed simultaneously with the repeal of current §35.143.

No comments were received regarding adoption of the new section.

The new section is adopted pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work; and Texas Occupations Code, §1702.061(b), which authorizes the department to adopt rules to administer this chapter.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on December 19, 2008.

TRD-200806623
Stanley E. Clark
Director
Texas Department of Public Safety
Effective date: January 8, 2009
Proposal publication date: October 31, 2008
For further information, please call: (512) 424-2135

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TITLE 40. SOCIAL SERVICES AND ASSISTANCE

PART 7. TEXAS COUNCIL ON PURCHASING FROM PEOPLE WITH DISABILITIES

CHAPTER 189. PURCHASES OF PRODUCTS AND SERVICES FROM PEOPLE WITH DISABILITIES

40 TAC §§189.2 - 189.4, 189.7, 189.8, 189.11

The Texas Council on Purchasing from People with Disabilities (council) adopts amendments to §§189.2 - 189.4, 189.7, 189.8, and 189.11, without changes to the proposed text as published in the October 3, 2008, issue of the *Texas Register* (33 TexReg 8308).

The amendments to §189.2, regarding definitions, remove the definition of Texas Building and Procurement Commission (commission) and replace it with Comptroller of Public Accounts (comptroller). This is due to House Bill 3560, 80th Legislature, 2007, which transferred the state procurement functions to the comptroller and renamed the commission to the Texas Facilities Commission. The comptroller now provides the administrative assistance to the council that the commission used to provide.

The amendments also remove the word "price" from the definition of "exception" in order to clarify the rule in accordance with statute. State law does not provide an exception for price. Instead, the council is charged with ensuring that products and services sold through the council's programs are priced at a fair market price.

The amendments to §189.3, regarding organization, remove the references to the commission and replace them with comptroller.

The amendments to §189.4, regarding ethical standards, replace the executive director of the commission with the deputy comptroller.

The amendments to §189.7, regarding contracting with central non-profit agencies, §189.8, regarding product specifications and exceptions, and §189.11, regarding records, remove the references to commission and replace them the comptroller.

The council received written comments from Mr. Floyd Self regarding the proposed amendments and the council's programs. The commenter's statements are summarized below, followed by the council's responses.

The commenter asked for the statutory basis for not providing an exception for price.

Response: Exceptions to the requirement to purchase goods and services through the council's programs are in §122.106, Human Resources Code. Price is not an exception in this statute.

The commenter raised questions regarding the definition and determination of "fair market pricing" by the council.

Response: There is not a definition for this term, but instead a process for arriving at the fair market value for each good and service. The process is set out in §122.015, Human Resources Code, and §189.9 of this title.

The commenter expressed a concern about removal of the word "price" from one section of the statute and not all sections.

Response: The council is not removing the word "price" from any statute. Price is considered in determining fair market value. However, price is not a statutory exception to buying a good or service from another source when it is available through the council's programs.

The commenter stated that "price" is a part of "best value" determination by definition in the purchasing statutes, and that removal of "price" in association with any procurement decision is not rational.

Response: Price is absolutely considered when the council determines the fair market value for the goods and services available through the council's programs. These rule amendments are simply to synchronize the exceptions to purchasing from the programs with the state law. These amendments do not affect the determination of price at all.

The commenter disagreed with council's "determination that there will be no fiscal implications for the state or local governments as a result of enforcing or administering these amended rules", and stated that he believes the council's programs as currently implemented are no longer effective.

Response: The council strongly disagrees with these comments. However, these comments are far beyond the scope of the amendments. The amendments clean up the rules to acknowledge that the Texas Building and Procurement Com-

mission was dissolved and to synchronize the exceptions with statute.

These amendments are adopted under Human Resources Code, §122.013, which authorizes the council to adopt rules for the implementation, extension, administration, or improvement of the program authorized by Chapter 122.

The amendments implement Human Resources Code, Chapter 122.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on December 16, 2008.

TRD-200806534
David D. Duncan
Deputy General Counsel
Texas Council on Purchasing from People with Disabilities
Effective date: January 5, 2009
Proposal publication date: October 3, 2008
For further information, please call: (512) 463-3562

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PART 17. STATE PENSION REVIEW BOARD

CHAPTER 604. HISTORICALLY UNDERUTILIZED BUSINESS PROGRAM

40 TAC §604.1

The State Pension Review Board (PRB) adopts amendments to 40 TAC §604.1, Historically Underutilized Businesses. The amended section is adopted without changes to the proposed text as published in the October 10, 2008, issue of the *Texas Register* (33 TexReg 8483). The section will not be republished.

The adopted amendment is to change the reference to the rules adopted by reference from the Texas Building and Procurement Commission, 1 TAC Part 5, §§111.11 - 111.28, to the Comptroller of Public Accounts, 34 TAC Part 1, Chapter 20, Subchapter B. These changes to the text are non-substantive, and they affect no new parties or subjects of regulation.

No comments were received on the proposed amendment.

The amendment is adopted under the rulemaking authority provided in Texas Government Code, Title 8, Subtitle A and §2161.003, which requires that the Board adopt the Comptroller of Public Accounts' rules for Historically Underutilized Businesses. Section 802.201 of the Texas Government Code provides that the Board shall adopt rules for the conduct of business.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on December 18, 2008.

TRD-200806569
Lynda Baker
Staff Services Officer
State Pension Review Board
Effective date: January 7, 2009
Proposal publication date: October 10, 2008
For further information, please call: (512) 463-1736

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TITLE 43. TRANSPORTATION

PART 1. TEXAS DEPARTMENT OF TRANSPORTATION

CHAPTER 1. MANAGEMENT

SUBCHAPTER A. ORGANIZATION AND RESPONSIBILITIES

43 TAC §1.2

The Texas Department of Transportation (department) adopts amendments to §1.2, concerning organization and responsibilities. The amendments to §1.2 are adopted without changes to the proposed text as published in the October 10, 2008, issue of the *Texas Register* (33 TexReg 8484) and will not be republished.

EXPLANATION OF ADOPTED AMENDMENTS

Government Code, §2001.039 requires a state agency to review each of its rules every four years or more frequently and, as a result of the review, to decide whether to readopt, amend, or repeal the rule. In the course of reviewing the rule relating to the organization of the department, the department identified changes that need to be made.

Amendments to §1.2, Texas Department of Transportation, change the name of the Automobile Theft Prevention Authority (authority) and remove language that refers to the authority's staff. House Bill 1887, 80th Legislature, 2007 changed the name of the authority from the Automobile Theft Prevention Authority to the Automobile Burglary and Theft Prevention Authority. Section 1.2(e) is amended to reflect that change. In 1997 the legislature removed the authority's authority to employ staff and required the authority to use staff of the department. To reflect existing law, the amendments delete the last sentence of §1.2(e), which refers to the authority's staff.

COMMENTS

No comments on the proposed amendments were received.

STATUTORY AUTHORITY

The amendments are adopted under Transportation Code, §201.101, which provides the Texas Transportation Commission with the authority to establish rules for the conduct of the work of the department.

CROSS REFERENCE TO STATUTE

Tex. Rev. Civ. Stat. Ann. art. 4413(37).

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on December 18, 2008.

TRD-200806572
Bob Jackson
General Counsel
Texas Department of Transportation
Effective date: January 7, 2009
Proposal publication date: October 10, 2008
For further information, please call: (512) 463-8683

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SUBCHAPTER D. PROCEDURE FOR ADOPTION OF RULES

43 TAC §1.11

The Texas Department of Transportation (department) adopts amendments to §1.11, concerning procedure for adoption of rules. The amendments to §1.11 are adopted without changes to the proposed text as published in the October 10, 2008, issue of the *Texas Register* (33 TexReg 8485) and will not be republished.

EXPLANATION OF ADOPTED AMENDMENTS

Government Code, §2001.039 requires a state agency to review each of its rules every four years or more frequently and, as the result of the review, to decide whether to readopt, amend, or repeal the rule. In the course of reviewing the rule relating to the procedure for the adoption of rules, the department identified a minor change that needs to be made.

Amendments to §1.11, Petition, correct the reference to the Administrative Procedure Act and for convenience provide a citation to the part of the act that relates to initiating rulemaking proceedings.

COMMENTS

No comments on the proposed amendments were received.

STATUTORY AUTHORITY

The amendments are adopted under Transportation Code, §201.101, which provides the Texas Transportation Commission with the authority to establish rules for the conduct of the work of the department.

CROSS REFERENCE TO STATUTE

Government Code, Chapter 2001, Subchapter B.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on December 18, 2008.

TRD-200806573
Bob Jackson
General Counsel
Texas Department of Transportation
Effective date: January 7, 2009
Proposal publication date: October 10, 2008
For further information, please call: (512) 463-8683

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CHAPTER 17. VEHICLE TITLES AND REGISTRATION

The Texas Department of Transportation (department) adopts amendments to §17.3, Motor Vehicle Certificates of Title, §17.22, Motor Vehicle Registration, and §17.28, Specialty License Plates, Symbols, Tabs, and Other Devices. The amendments to §§17.3, 17.22, and 17.28 are adopted without changes to the proposed text as published in the October 10, 2008, issue of the *Texas Register* (33 TexReg 8485) and will not be republished.

EXPLANATION OF ADOPTED AMENDMENTS

The amendments are necessary to update and clarify existing information. In 2003, the Legislature amended Transportation Code, §551.303 authorizing the use of neighborhood electric vehicles (NEVs) on roadways posted with speeds of 35 miles per hour or less. The department was authorized to adopt rules relating to the registration and issuance of license plates for these vehicles in new Transportation Code, §551.302. In 2005, the Legislature added a definition for NEV to Transportation Code, §551.301. This definition corresponds with the federal definition. The rules set out the department's policy regarding NEVs.

The department reviewed the timelines for replacement plates in order to decrease costs and to eliminate unnecessary replacements which, in turn, reduces waste. The amendments to §17.22 eliminate the requirement for cancellation of a license plate upon receipt of one public complaint about the alpha-numeric pattern; and standardize when general issue, personalized, or specialty license plates are reissued at no charge with the time period that all general issue and personalized plates are scheduled to be replaced.

Amendments to §17.28 clarify the re-use of license plates that were issued the same year as the year model of an Antique, Classic Motor Vehicle, or Classic Travel Trailer; standardize when personalized or specialty license plates are reissued at no charge; clarify the required proof of an organization's current non-profit status upon application for a new non-profit specialty license plate; and update the application, review, and approval process for development of new non-profit specialty license plates.

Amendments to §17.3(a), Certificates of title, add new paragraph (3) to define what constitutes an NEV and to clarify the title requirements for NEVs. An NEV must meet the standards established for low speed vehicles in Federal Motor Vehicle Safety Standard 500 (49 C.F.R. §571.500) and may be either electric or alternative fueled. An NEV is described as a four-wheeled motor vehicle that must attain a speed of at least 20 miles per hour but no more than 25 miles per hour, and that has a gross vehicle weight of less than 3,000 pounds. Subsequent paragraphs are renumbered accordingly.

Amendments to §17.3(c)(1)(A) add clause (iv) to clarify that the manufacturer's certificate of origin for a new neighborhood electric vehicle (NEV) must include a statement from the manufacturer that the vehicle meets the standards of Federal Motor Vehicle Safety Standard 500 (49 C.F.R. §571.500) for low speed vehicles. This declaration from the manufacturer is necessary to ensure the certificate of title and motor vehicle record properly identifies the vehicle as an NEV for which operation on the public roads is restricted.

Amendments to §17.22(c)(3)(B) clarify when a license plate may be cancelled or not issued due to the license plate's alpha-numeric pattern being objectionable or misleading. Other amendments to §17.22(c)(3)(B) delete the provision for cancellation of a license plate as a result of receiving one public complaint about the license plate's alpha-numeric pattern being objectionable or misleading. The department believes that one complaint may not be sufficient justification to take action to cancel or not issue a license plate, and that the determination whether to cancel or not issue a license plate should be based on the number and content of the complaint or complaints received.

Amendments to §17.22(d)(7) standardize the timeframe for reissuance at no-charge of all license plates to maintain reflectivity standards established by the department and for consistency. Subparagraph (A) is deleted to eliminate the provisions for reissuance of license plates at no charge that are over five years old upon the request of the owner. This is a cost saving to the department because there is no need for replacement since the plates still meet all the appropriate standards. Additional changes accurately describe when license plates shall be issued at no charge by the county tax assessor-collectors. Currently, replacement is required when license plates are "over eight years old"; however, based on the existing method used by the department to determine the plate age of a license plate, license plates shall be replaced when they are "over seven years old from the date of issuance". Previously, the department calculated the plate age from the "renewal date" or the date the license plate was first renewed. Now the plate age is calculated based on the "birth date" or date of issuance, of the license plates. This change also establishes a uniform license plate age that requires replacement due to the possible loss of reflectivity.

Amendments to §17.22(e), replacement of license plates, symbols, tabs, and other devices, delete the requirement for a notarized affidavit when an applicant requests replacement of a plate that is lost, stolen, or mutilated. A statement to that effect continues to be required; however, the statement does not need to be notarized.

New §17.22(h) adds the requirement that neighborhood electric vehicles (NEV) be titled in order to be registered for operation on public roads, as provided by Transportation Code, §502.152. This subsection also clarifies that NEV operation on public roads is restricted and an NEV may only be operated in accordance with Transportation Code, §551.303, must display a slow-moving-vehicle emblem as provided in Transportation Code, §547.001, and is subject to all traffic and other laws applicable to motor vehicles. An NEV must comply with the evidence of financial responsibility requirements established in Transportation Code, §502.153 prior to issuance of registration and the license plate classification that will be assigned to an NEV upon registration. Subsequent subsections are redesignated accordingly.

Amendments to §17.28(c)(2) clarify when old license plates are eligible for re-use, in accordance with Transportation Code, §§504.501, 504.5011, and 504.502. New §17.28(c)(2)(A) clarifies the restrictions on use when the original license plate use was restricted to a specific vehicle type, or the original license plate was a qualifying license plate. New §17.28(c)(2)(B) clarifies that if the original license plate use was restricted to a specific vehicle type, or the original license plate was a qualifying license plate, the license plate may be used on an Exhibition Vehicle, Classic Motor Vehicle, or Classic Travel Trailer. Subsequent language on validation stickers and tabs is moved from paragraph (3) of §17.28(c) and reorganized into new paragraph §17.28(c)(2)(C) to improve readability.

Amendments to §17.28(d)(3)(E)(ii) standardize the timeframe for reissuance at no-charge of personalized and specialty license plates, to be consistent with the timeframes provided for general issue plates in §17.22(d)(7). The amendments change the reissuance period for personalized license plates from every "six years" to every "seven years" from the date of issuance and changes the reissuance period for specialty license plates from every "eight years" to every "seven years" from the date of issuance.

New §17.28(i), Development of new specialty license plates, provides the process for development of new specialty license plates, including the application requirements and process for approval of new designs submitted by non-profit organization applicants. Extensive rearrangement of the existing paragraphs is made for clarity and to improve readability. New language is added to update and clarify the application requirements, and the review and approval process.

New §17.28(i)(1), Procedure, contains the same substance as deleted §17.28(i)(1), providing a general description of the procedure and providing the statutory citation that authorizes development of new specialty license plates.

New §17.28(i)(2), Special license plate committee, contains the same substance as deleted §17.28(i)(1)(A) regarding how the specialty license plate committee is established. The schedule for committee meetings has been changed by deleting "once every six months" and adding "as needed" to allow committee meetings to be held based on the number of applications received, if any, and to decrease the non-profit's organization's waiting time.

New §17.28(i)(3), Applications for the creation of new specialty license plates, contains the same substance as deleted §17.28(i)(2)(B) regarding the requirement that an applicant submit a written application and the information that must accompany the application. This new section clarifies that certification from the Internal Revenue Service must certify that the applicant's status as a non-profit entity is current at the time of application. Additionally, a licensing agreement from the appropriate third party is required if the applicant is using a design or design element that is intellectual property.

New §17.28(i)(4), Committee review process, contains the same substance as deleted §17.28(i)(1)(B), regarding requests for additional information by the committee, the committee review of applications for license plates that are restricted to certain individuals or groups, and requiring a complete application if the application is to be considered by the committee.

New §17.28(i)(5), Request for additional information, amends the substance of deleted §17.28(i)(2)(B) to clarify that if additional information is requested by the committee, and the information is not received by the requested due date, the application will be returned as incomplete. New §17.28(i)(5)(B) is added to provide an exception that allows the committee to tentatively approve an application, pending receipt of the additional information, if the committee determines that the additional information is not critical for committee consideration and approval of the application. The department understands that some information requested by the committee is not critical to making a decision on the application, but is necessary for the committee to make a recommendation on the new specialty license plate to the executive director.

New §17.28(i)(6), Committee recommendation, contains the same substance as deleted §17.28(i)(1)(C) providing the criteria used by the committee as a basis for their recommendation for approval of a new specialty license plate design. The "projected sales of the license plate as demonstrated in the marketing plan and by the listing of target purchasers" has been deleted as an item that is taken into consideration by the committee when making a recommendation because such a restriction is not necessary as long as the deposit is made. The deposit ensures that the department will recoup its expenditures. Clarification has been added that the committee will consider whether the license plate design "appears to meet" the department's legibility and reflectivity standards, and meets the department's uniqueness standards when making their recommendation. Whether a design meets the legibility and reflectivity standards cannot be determined until an actual license plate of that design is manufactured and tested. New §17.28(i)(6)(C) clarifies that the deposit information previously included in subsection (i)(3)(A) must be provided before a recommendation may be made.

New §17.28(i)(7), Public comment on proposed design, contains the same substance as deleted §17.28(i)(1)(D) regarding posting of proposed specialty license plate designs on the department's website but deletes the requirement for posting notice of the new license plate design in the *Texas Register* for a 10-day period to receive public comments to be consistent with the postings for vendor specialty license plates. New paragraph (7) is also updated to provide current information relating to the simultaneous notification the department currently makes to all other specialty license plate organizations and their sponsoring agencies to advise of the posting and how comments must be submitted on the proposed license plate design.

New §17.28(i)(8), Final approval, contains the same provisions as deleted §17.28(i)(2)(B)(iv) and (v) regarding approval of designs recommended by the committee, and if a design is disapproved, a new application and supporting documentation must be submitted for the design to be reconsidered for approval. Additionally, the executive director of the department must currently approve new specialty license plate designs. This new paragraph expands the approval authority to allow a designee of the executive director, not below the level of division director, to approve new specialty license plate designs.

New §17.28(i)(9), Issuance of specialty plates, contains the same provisions as deleted §17.28(i)(3) that address the process once a new specialty license plate design has been approved, including the requirement for submission of either a deposit or the specified number of applications for the new license plate, as provided in Transportation Code, §504.702. Additionally, this new paragraph provides that the department has final approval of all specialty license plate designs. The department may adjust or reconfigure submitted draft designs to comply with the format of the license plate specifications. The department will not post an adjusted or reconfigured design on the department's website for additional comment.

New §17.28(i)(10), Redesign of specialty license plate, contains the same substance as deleted §17.28(i)(4) providing that the applicant may request a redesign of a previously approved specialty license plate design and that the redesigned license plate will go through the same approval process as a new specialty license plate design. "Original or a subsequent" has been deleted when referring to the applicant as this language is unnecessary. Language is added to clarify that a "redesign" replaces an existing design, including only a change to the license plate design, and does not encompass changes to the number of alpha-numeric characters or alpha-numeric pattern on the license plate, the funding recipient, or any other change that requires programming modifications. Language is also added to require that the request must be made in writing.

COMMENTS

No comments on the proposed amendments were received.

SUBCHAPTER A. MOTOR VEHICLE CERTIFICATES OF TITLE

43 TAC §17.3

STATUTORY AUTHORITY

The amendments are adopted under Transportation Code, §201.101, which authorizes the Texas Transportation Commission (commission) to promulgate rules for the conduct of the work of the department, and more specifically Transportation Code, §502.0021, which authorizes the adoption of rules to administer the registration of vehicles, Transportation Code, §502.180, which authorizes the adoption of rules for the issuance of license plate or registration insignia, Transportation Code, §504.004, which authorizes the commission to adopt rules to implement the statutes relating to specialty license plates, and Transportation Code, §551.302, which authorizes the adoption of rules relating to the registration of neighborhood electric vehicles.

CROSS REFERENCE TO STATUTE

Transportation Code, §§502.052, 502.152, 502.153, 502.180, 502.184, 504.501, 504.5011, 504.502, 504.702, 504.801, 547.001, and 551.301 - 551.303.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on December 18, 2008.

TRD-200806574
Bob Jackson
General Counsel
Texas Department of Transportation
Effective date: January 7, 2009
Proposal publication date: October 10, 2008
For further information, please call: (512) 463-8683

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SUBCHAPTER B. MOTOR VEHICLE REGISTRATION

43 TAC §17.22, §17.28

STATUTORY AUTHORITY

The amendments are adopted under Transportation Code, §201.101, which authorizes the Texas Transportation Commission (commission) to promulgate rules for the conduct of the work of the department, and more specifically Transportation Code, §502.0021, which authorizes the adoption of rules to administer the registration of vehicles, Transportation Code, §502.180, which authorizes the adoption of rules for the issuance of license plate or registration insignia, Transportation

Code, §504.004, which authorizes the commission to adopt rules to implement the statutes relating to specialty license plates, and Transportation Code, §551.302, which authorizes the adoption of rules relating to the registration of neighborhood electric vehicles.

CROSS REFERENCE TO STATUTE

Transportation Code, §§502.052, 502.152, 502.153, 502.180, 502.184, 504.501, 504.5011, 504.502, 504.702, 504.801, 547.001, and 551.301 - 551.303.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on December 18, 2008.

TRD-200806575
Bob Jackson
General Counsel
Texas Department of Transportation
Effective date: January 7, 2009
Proposal publication date: October 10, 2008
For further information, please call: (512) 463-8683

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CHAPTER 21. RIGHT OF WAY
SUBCHAPTER M. QUARRY AND PIT SAFETY

The Texas Department of Transportation (department) adopts amendments to §21.701, Purpose and Scope, §21.702, Definitions, §21.703, Form Availability, and §21.704, Fees; repeal of §21.707, Barrier Construction Standards, and new §21.707, Barrier Construction Standards; amendments to §21.708, Prohibition Against Opening Pits; repeal of §21.710, Sloping of Pit Sidewalls, and new §21.710, Sloping of Pit Sidewalls; amendments to §21.711, Safety Certificate Required, and new §21.724, Distance Between Pit and Property Line, all concerning quarry and pit safety. The amendments to §§21.701 - 21.704, 21.708, and 21.711, repeal of §21.707 and §21.710, and new §§21.707, 21.710, and 21.724 are adopted without changes to the proposed text as published in the October 10, 2008, issue of the *Texas Register* (33 TexReg 8494) and will not be republished.

EXPLANATION OF ADOPTED AMENDMENTS

The amendments to 43 TAC Chapter 21, Subchapter M clarify the requirements for operating pits and quarries to satisfy safety requirements. A new section is added to the subchapter to incorporate the requirements of Natural Resources Code, §133.901, Distance Between Pit and Property Line.

Amendments to §21.701, Purpose and Scope, are necessary to clarify that the purpose of the subchapter is to implement the Texas Aggregate Quarry and Pit Safety Act. The amendments also remove the subsection headings to conform to the style used for the subchapter.

Amendments to §21.702, Definitions, add a new definition for "active quarry or pit," which complements the defined term "inactive quarry or pit." The new term is used in a new section relating to the distance between a quarry and adjacent property. The definition of "overburden" is amended to clarify that it includes material that must be removed to extract the aggregate being quarried. The definition of "quarry" is amended to recognize that a plant is a part of the quarry only if the aggregates are processed at the site. The amendments remove the definition of "setback distance" because the term is used only in §21.708, Prohibition Against Opening Pits. That section contains the substance of the definition and the removal of the defined term eliminates the redundancy. The amendments also make changes to "unacceptable unsafe location" to conform the definition to that contained in the statute. Definitions are renumbered accordingly.

Amendments to §21.703, Form Availability, provide that various application forms applicable to the subchapter are available at the department's Internet site. This change is made for the convenience of persons who are regulated under the subchapter.

Amendments to §21.704, Fees, provide that the payment of fees must be made by a check or money order payable to the state. This change clarifies the method of accepted payment.

Existing §21.707, Barrier Construction Standards, is repealed and new §21.707 with the same heading is added. The new section requires departmental approval of barriers that are required between public roads and pits and sets the standards that are applicable to different types of barriers. The new section provides that a barrier must be maintained so that the barrier conforms to the construction standards in effect at the time the applicable safety certificate was issued. The new section conforms the rules to the standards that are currently being used by the department and provides the flexibility that is needed to allow the adoption of technological safety advances without making additional changes to the rules.

Amendments to §21.708, Prohibition Against Opening Pits, prohibit an operator who is violating the quarry and pit safety rules at one site from opening a pit at another site and require an operator who is not the owner of the site to obtain written permission of the property owner before opening a new pit. The purpose of the amendments is to improve safety by requiring the operator to be more accountable to the department and the property owner and providing additional tools to bring an operator into conformity with the quarry and pit safety rules and the Texas Aggregate Quarry and Pit Safety Act.

Existing §21.710, Sloping of Pit Sidewalls, is repealed and new §21.710 with the same heading is added. The new section revises the former rules relating to when the department will allow an operator to use sloping walls in a pit instead of placing barriers. The new section clarifies the requirements and makes them easier to understand.

Amendments to §21.711, Safety Certificate Required, clarify that the department has the duty to give written notification to the operator or land owner if an inspection indicates that a safety certificate is required.

New §21.724, Distance Between Pit and Property Line, is added to require a minimum distance of 50 feet between the edge of the consolidated material of a pit and the nearest property line that is not owned or leased by the responsible party when quarrying at the site is completed. The new section implements the requirements of Natural Resources Code, §133.901. The addition of a rule should help ensure that responsible parties are aware of the additional regulatory requirements for pits when quarrying is completed. The rule also specifies when the department will conclude that quarrying is completed at a particular quarry or pit--when the quarry or pit is no longer active as defined in the subchapter. As described earlier, the rules add a definition of active quarry or pit as being a quarry or pit that has ongoing aggregate extraction activity within the preceding 180-day period.

The department's experience is that quarries and pits can have long spans of time during which no activity occurs, and there is a need for clarity concerning when the requirements of Natural Resources Code, §133.901, apply.

COMMENTS

No comments on the proposed amendments, repeals, and new sections were received.

43 TAC §§21.701 - 21.704, 21.707, 21.708, 21.710, 21.711, 21.724

STATUTORY AUTHORITY

The amendments and new sections are adopted under Transportation Code, §201.101, which provides the Texas Transportation Commission (commission) with the authority to establish rules for the conduct of the work of the department, and more specifically Natural Resources Code, §133.011, which provides the commission with the authority to establish rules to implement and enforce the Texas Aggregate Quarry and Pit Safety Act (Natural Resources Code, Chapter 133).

CROSS REFERENCE TO STATUTE

Natural Resources Code, Chapter 133.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on December 18, 2008.

TRD-200806577
Bob Jackson
General Counsel
Texas Department of Transportation
Effective date: January 7, 2009
Proposal publication date: October 10, 2008
For further information, please call: (512) 463-8683

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43 TAC §21.707, §21.710

STATUTORY AUTHORITY

The repeals are adopted under Transportation Code, §201.101, which provides the Texas Transportation Commission (commission) with the authority to establish rules for the conduct of the work of the department, and more specifically Natural Resources Code, §133.011, which provides the commission with the authority to establish rules to implement and enforce the Texas Aggregate Quarry and Pit Safety Act (Natural Resources Code, Chapter 133).

CROSS REFERENCE TO STATUTE

Natural Resources Code, Chapter 133.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on December 18, 2008.

TRD-200806576
Bob Jackson
General Counsel
Texas Department of Transportation
Effective date: January 7, 2009
Proposal publication date: October 10, 2008
For further information, please call: (512) 463-8683

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TEXAS DEPARTMENT OF INSURANCE

Notification Pursuant to the Insurance Code, Chapter 5, Subchapter L

As required by the Insurance Code, Article 5.96 and 5.97, the ***Texas Register*** publishes notice of proposed actions by the Texas Department of Insurance. Notice of action proposed under Article 5.96 must be published in the ***Texas Register*** not later than the 30th day before the proposal is adopted. Notice of action proposed under Article 5.97 must be published in the ***Texas Register*** not later than the 10th day before the proposal is adopted. The Administrative Procedure Act, Government Code, Chapters 2001 and 2002, does not apply to department action under Articles 5.96 and 5.97.

The complete text of the proposal summarized here may be examined in the offices of the Texas Department of Insurance, 333 Guadalupe Street, Austin, Texas 78701.

This notification is made pursuant to the Insurance Code, Article 5.96, which exempts it from the requirements of the Administrative Procedure Act.

Texas Department of Insurance

Proposed Action on Rules

EXEMPT FILING NOTIFICATION PURSUANT TO THE INSURANCE CODE CHAPTER 5, SUBCHAPTER L, ARTICLE 5.96

The Commissioner of Insurance (Commissioner) will hold a public hearing under Docket Number 2703 on February 3, 2009, at 9:30 a.m., in Room 100 of the William P. Hobby Building, 333 Guadalupe Street in Austin, Texas to consider a petition by the staff of the Texas Department of Insurance (Department) proposing the adoption of (i) revised Texas Workers' Compensation Classification Relativities (classification relativities) to replace those adopted pursuant to Commissioner's Order Number 07-0915, dated October 23, 2007; and (ii) a revised table to amend the Texas Basic Manual of Rules, Classification, and Experience Rating Plan for Workers' Compensation and Employers' Liability Insurance (Basic Manual) concerning the Expected Loss Rates and Discount Ratios used in experience rating. Staff's petition (Reference Number W-1208-20) was filed on December 19, 2008.

Staff requests that the proposed revised classification relativities be available for adoption by insurers immediately, but that their use be mandatory for all policies with an effective date on or after May 1, 2009, unless the insurer files insurer-specific classification relativities. Staff further requests that the revised table amending the Basic Manual be made effective for workers' compensation experience modifiers with an effective date on or after May 1, 2009.

Texas Insurance Code §2053.051 requires the Department to determine hazards by class and establish classification relativities applicable to the payroll in each class for workers' compensation insurance. Section 2053.052 requires the Commissioner to adopt a uniform experience rating plan for workers' compensation insurance. Section 2053.051 and §2053.052 further provide that the classification system and experience rating plans be revised at least once every five years.

The classification relativities currently in effect are based on experience data reflecting workers' compensation experience from policies with effective dates in 2000 through 2004. The proposed classification relativities are based on the analysis of experience data from policies with effective dates in 2001 through 2005. Staff's proposed classification relativities reflect changes in experience that have occurred.

Current classification relativities are at an average level of 60 percent of the overall average level of the 1994 classification relativities. This 60 percent level was adopted pursuant to Commissioner's Order Number 07-0915, dated October 23, 2007, to better reflect improvements in experience that had occurred with the passage of time.

Recent data and projections show that Texas loss experience has continued to improve. Therefore, staff proposes that each of the revised classification relativities be multiplied by a factor of 54/60, to bring the relativities to 54 percent of the overall average of the 1994 classification relativities.

Staff recommends capping changes in the proposed classification relativities to +25 percent and -25 percent of the current classification relativities prior to the adjustment to reduce the classification relativities to 54 percent of the 1994 classification relativities. After adjustment for the latter change, the proposed classification relativities will range from +12.5 percent to -32.5 percent of the current classification relativities.

Modifications to the classification relativities require concurrent changes in the expected loss rates and discount ratios, which are contained in Table II of the Basic Manual. The proposed expected loss rates are based on the anticipated level of the losses that would be used to experience-rate the average policy effective in 2009 and early 2010. Staff also proposes to cap changes in the expected loss rates to +25 percent and -25 percent from the current expected loss rates. Staff also proposes to revise the discount ratios in Table II to reflect the ratios that will exist for losses used to experience-rate policies effective in 2009 and early 2010. The changes in the discount ratios are not subject to capping.

Copies of the full text of the staff petition and a schedule of the proposed revised classification relativities and a table of the proposed expected loss rates and discount ratios are available for review in the Office of the Chief Clerk of the Texas Department of Insurance, 333 Guadalupe Street, Austin, Texas 78714-9104. For further information or to request copies of the petition and proposed revised schedule and table, please contact Sylvia Gutierrez at ChiefClerk@tdi.state.tx.us, (512) 463-6327 (Reference Number W-1208-20).

Comments on the proposed changes may be submitted in writing by 5:00 pm on February 2, 2009, to Gene Jarmon, General Counsel and Chief Clerk, P.O. Box 149104, MC 113-2A, Austin, Texas 78714-9104. An additional copy should be simultaneously submitted to J'ne Byckovski, Chief Actuary, Property and Casualty Program, P.O. Box 149104, MC 105-5F, Austin, Texas 78714-9104. Interested persons may also submit oral and/or written comments at the hearing.

This notification is made pursuant to the Texas Insurance Code, Article 5.96, which exempts action taken under this article from the requirements of the Administrative Procedure Act (Government Code, Title 10, Chapter 2001).

TRD-200806639

Gene C. Jarmon
General Counsel and Chief Clerk
Texas Department of Insurance
Filed: December 19, 2008

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REVIEW OF AGENCY RULES

This section contains notices of state agency rules review as directed by the Texas Government Code, §2001.039. Included here are (1) notices of *plan to review;* (2) notices of *intention to review,* which invite public comment to specified rules; and (3) notices of *readoption,* which summarize public comment to specified rules. The complete text of an agency's *plan to review* is available after it is filed with the Secretary of State on the Secretary of State's web site (http://www.sos.state.tx.us/texreg). The complete text of an agency's rule being reviewed and considered for *readoption* is available in the *Texas Administrative* Code on the web site (http://www.sos.state.tx.us/tac).

For questions about the content and subject matter of rules, please contact the state agency that is reviewing the rules. Questions about the web site and printed copies of these notices may be directed to the *Texas Register* office.

Adopted Rule Reviews

Texas Department of Insurance, Division of Workers' Compensation

Title 28, Part 2

Pursuant to the notice of proposed rule review published in the August 8, 2008, issue of the *Texas Register* (33 TexReg 6397), the Texas Department of Insurance, Division of Workers' Compensation has reviewed and considered for readoption, revision or repeal all sections as they existed on August 8, 2008, of the following chapter of Title 28, Part 2 of the Texas Administrative Code, in accordance with Texas Government Code §2001.039: Chapter 102, Practices and Procedures--General Provisions.

The Department considered, among other things, whether the reasons for adoption of this rule continue to exist. The Department received no written comments regarding the review of its rule.

The Department has determined that the reasons for adopting the remaining sections continue to exist and those sections are retained in their present form. However, other sections that were reviewed may be subsequently revised in accordance with the Department's internal procedures. Any such revisions will be accomplished in accordance with the Texas Administrative Procedure Act.

This concludes the Department's review of Chapter 102. The completion of the review of this chapter concludes the rule review process.

TRD-200806553
Dirk Johnson
General Counsel
Texas Department of Insurance, Division of Workers' Compensation
Filed: December 18, 2008

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Pursuant to the notice of proposed rule review published in the May 2, 2008, issue of the *Texas Register* (33 TexReg 3652), the Texas Department of Insurance, Division of Workers' Compensation has reviewed and considered for readoption, revision or repeal all sections as they existed on May 2, 2008, of the following chapter of Title 28, Part 2 of the Texas Administrative Code, in accordance with Texas Government Code §2001.039: Chapter 116, General Provisions--Subsequent Injury Fund.

The Department considered, among other things, whether the reasons for adoption of this chapter continue to exist. The Department received no written comments regarding the review of its rules.

The Department has determined that the reasons for adopting the remaining sections continue to exist and those sections are retained in their present form. However, other sections that were reviewed may be subsequently revised in accordance with the Department's internal procedures. Any such revisions will be accomplished in accordance with the Texas Administrative Procedure Act.

This concludes the Department's review of Chapter 116. The completion of the review of this chapter concludes the rule review process.

TRD-200806554
Dirk Johnson
General Counsel
Texas Department of Insurance, Division of Workers' Compensation
Filed: December 18, 2008

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Pursuant to the notice of proposed rule review published in the May 2, 2008, issue of the *Texas Register* (33 TexReg 3652), the Texas Department of Insurance, Division of Workers' Compensation has reviewed and considered for readoption, revision or repeal all sections as they existed on May 2, 2008, of the following chapter of Title 28, Part 2 of the Texas Administrative Code, in accordance with Texas Government Code §2001.039: Chapter 147, Dispute Resolution--Agreements, Settlements, Commutations.

The Department considered, among other things, whether the reasons for adoption of this rule continue to exist. The Department received no written comments regarding the review of its rule.

The Department has determined that the reasons for adopting the remaining sections continue to exist and those sections are retained in their present form. However, other sections that were reviewed may be subsequently revised in accordance with the Department's internal procedures. Any such revisions will be accomplished in accordance with the Texas Administrative Procedure Act.

This concludes the Department's review of Chapter 147. The completion of the review of this chapter concludes the rule review process.

TRD-200806555
Dirk Johnson
General Counsel
Texas Department of Insurance, Division of Workers' Compensation
Filed: December 18, 2008

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Pursuant to the notice of proposed rule review published in the May 2, 2008, issue of the *Texas Register* (33 TexReg 3653), the Texas Department of Insurance, Division of Workers' Compensation has reviewed and considered for readoption, revision or repeal all sections as they existed on May 2, 2008, of the following chapter of Title 28, Part 2 of

the Texas Administrative Code, in accordance with Texas Government Code §2001.039: Chapter 152, Attorneys' Fees.

The Department considered, among other things, whether the reasons for adoption of this rule continue to exist. The Department received no written comments regarding the review of its rule.

The Department has determined that the reasons for adopting the remaining sections continue to exist and those sections are retained in their present form. However, other sections that were reviewed may be subsequently revised in accordance with the Department's internal procedures. Any such revisions will be accomplished in accordance with the Texas Administrative Procedure Act.

This concludes the Department's review of Chapter 152. The completion of the review of this chapter concludes the rule review process.

TRD-200806556
Dirk Johnson
General Counsel
Texas Department of Insurance, Division of Workers' Compensation
Filed: December 18, 2008

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Texas Department of Licensing and Regulation

Title 16, Part 4

The Texas Department of Licensing and Regulation ("Department") filed a notice of intent to review and consider for re-adoption, revision, or repeal, 16 Texas Administrative Code ("TAC") Chapter 59, Continuing Education Requirements in accordance with the requirements of Texas Government Code, §2001.039. The Notice of Intent to Review was published in the October 10, 2008, issue of the *Texas Register* (33 TexReg 8561).

In accordance with the requirements of Texas Government Code, §2001.039, the Department reviewed the administrative rules of 16 TAC, Chapter 59, Continuing Education Requirements, to determine if the reasons for initially adopting the rules continue to exist. The Department determined that the rules are still essential in implementing the provisions of Texas Occupations Code, Chapter 51, in particular §51.405, and recommended to the Commission the re-adoption of Chapter 59.

If the Department proposes to amend 16 TAC Chapter 59 before the next four-year rule review, the proposed changes will be published in the Proposed Rules section of the *Texas Register* and will be open for public comment prior to final adoption by the Commission in accordance with the requirements of the Administrative Procedure Act, Texas Government Code, Chapter 2001.

As noted above, the Notice of Intent to Review was published in the October 10, 2008, issue of the *Texas Register* and distributed to persons internal and external to the agency. The public comment period closed on November 10, 2008. The Department did not receive any public comments on the notice.

The rules are re-adopted by the Commission in accordance with Texas Government Code, §2001.039. This concludes the review of 16 TAC Chapter 59, Continuing Education Requirements.

TRD-200806601
William H. Kuntz, Jr.
Executive Director
Texas Department of Licensing and Regulation
Filed: December 18, 2008

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Texas Department of Transportation

Title 43, Part 1

The Texas Department of Transportation (department) files notice of the completion of review and the readoption of Title 43 TAC Part 1, Chapter 2, Environmental Policy, Chapter 7, Rail Facilities, and Chapter 8, Motor Vehicle Distribution.

This review and readoption has been conducted in accordance with Government Code, §2001.039. The Texas Transportation Commission (commission) has reviewed these rules and determined that the reasons for adopting them continue to exist. The department received no comments on the proposed rule review, which was published in the October 24, 2008, issue of the *Texas Register* (33 TexReg 8813).

Independent of this review, the commission in November 2008 proposed amendments to §2.1 relating to general and emergency environmental action procedures as published in the December 5, 2008, issue of the *Texas Register* (33 TexReg 9954).

This concludes the review of Chapters 2, 7, and 8.

Questions regarding this rule review may be submitted in writing to Bob Jackson, General Counsel, Texas Department of Transportation, 125 East 11th Street, Austin, Texas 78701-2483, or by phone at (512) 463-8630.

TRD-200806578
Bob Jackson
General Counsel
Texas Department of Transportation
Filed: December 18, 2008

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IN ADDITION

The *Texas Register* is required by statute to publish certain documents, including applications to purchase control of state banks, notices of rate ceilings issued by the Office of Consumer Credit Commissioner, and consultant proposal requests and awards. State agencies also may publish other notices of general interest as space permits.

Office of the Attorney General

Notice of Settlement of a Texas Solid Waste Disposal Act Enforcement Action

Notice is hereby given by the State of Texas of the following proposed resolution of an environmental enforcement lawsuit under the Texas Health & Safety Code. Before the State may settle a judicial enforcement action, pursuant to the Texas Water Code, the State shall permit the public to comment in writing on the proposed judgment. The Attorney General will consider any written comments and may withdraw or withhold consent to the proposed agreed judgment if the comments disclose facts or considerations that indicate that the consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the Act.

Case Title and Court: Settlement Agreement in *State of Texas v. Jay Eisenberg*; Cause No. D-1-GV-07-002505; Travis County District Court.

Background: This suit alleges violations of rules promulgated under the Texas Solid Waste Disposal Act relating to the disposal of solid waste in Dallas, Texas. The Defendant is Jay Eisenberg. The suit seeks injunctive relief and recovery of civil penalties, attorney's fees, court costs.

Nature of Settlement: The settlement awards $20,000.00 in civil penalties, $7,700.00 in attorneys fees, and $142.65 in court costs to the State. The Defendant is also ordered to remove all old material on the property no later than 30 months after the effective date of the judgment.

For a complete description of the proposed settlement, the complete proposed Agreed Final Judgment should be reviewed. Requests for copies of the judgment, and written comments on the proposed settlement should be directed to Vanessa Puig-Williams, Assistant Attorney General, Office of the Texas Attorney General, P.O. Box 12548, Austin, Texas 78711-2548, (512) 463-2012, facsimile (512) 320-0052. Written comments must be received within 30 days of publication of this notice to be considered.

TRD-200806588
Stacey Napier
Deputy Attorney General
Office of the Attorney General
Filed: December 18, 2008

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Coastal Coordination Council

Notice and Opportunity to Comment on Requests for Consistency Agreement/Concurrence Under the Texas Coastal Management Program

On January 10, 1997, the State of Texas received federal approval of the Coastal Management Program (CMP) (62 Federal Register pp. 1439-1440). Under federal law, federal agency activities and actions affecting the Texas coastal zone must be consistent with the CMP goals and policies identified in 31 TAC Chapter 501. Requests for federal consistency review were deemed administratively complete for the following project(s) during the period of December 12, 2008, through December 18, 2008. As required by federal law, the public is given an opportunity to comment on the consistency of proposed activities in the coastal zone undertaken or authorized by federal agencies. Pursuant to 31 TAC §§506.25, 506.32, and 506.41, the public comment period for this activity extends 30 days from the date published on the Coastal Coordination Council web site. The notice was published on the web site on December 24, 2008. The public comment period for this project will close at 5:00 p.m. on January 23, 2009.

FEDERAL AGENCY ACTIONS:

Applicant: Port Arthur LNG Holdings, LLC; Location: The project is located at the Sabine-Neches waterway in Jefferson County, Texas. The project can be located on the U.S.G.S. quadrangle map entitled: Port Arthur South, Texas. Approximate UTM Coordinates in NAD 27 (meters): Zone 15; Easting: 407354; Northing: 3298171. Project Description: The applicant proposes to construct a combined crude oil, liquefied petroleum gas and refined products import/export terminal along the western bank of the Sabine-Neches Waterway. The proposed berthing slips will be dredged to -48ft (MLLW) or to a depth consistent with the U.S. Army Corps of Engineer's (Corps') planned deepening of the waterway. Each slip will consist of breasting dolphins, mooring dolphins, an approach trestle, pipeway trestle, and a loading/unloading platform. Proposed onshore facilities will include storage tanks and associated piping, pipe racks, pumps, control buildings, and support facilities. Dredged material generated during construction of the proposed slip will be beneficially used to fill areas of degraded marsh in an area known as the Pintail Flats in the J. D. Murphree Wildlife Management Area (WMA). Also included is the relocation of Texas State Hwy 87 (SH 87) and the utility corridors that parallel the highway. The highway relocation measures approximately 3.3 miles in length. The highway relocation was previously permitted on 14 February 2008 through Corps permit number 23734. At the request of the Texas Parks and Wildlife Department (TPWD) an access road will be built to allow continued access in to the WMA. A total of 139.9 acres will be permanently impacted as a result of the proposed project. Approximately 123.1 acres of wetlands will impacted by the construction of the terminal; approximately 97.9 acres of wetlands will be impacted by the SH 87 reroute (81.4 temporary, 16.5 permanent), and approximately 0.3 acres of wetlands may be impacted by the TPWD access road. CCC Project No.: 09-0038-F1. Type of Application: U.S.A.C.E. permit application #SWG-2008-00497 is being evaluated under §10 of the Rivers and Harbors Act of 1899 (33 U.S.C.A. §403) and §404 of the Clean Water Act (33 U.S.C.A. §1344). Note: The consistency review for this project may be conducted by the Railroad Commission of Texas under §401 of the Clean Water Act (33 U.S.C.A. §1344).

Applicant: Oiltanking Texas City, LP; Location: The project is located on the Texas City Channel, immediately west of the Texas City Industrial Turning Basin, in Texas City, Galveston County, Texas. The project can be located on the U.S.G.S. quadrangle map entitled: Texas City, Texas. Approximate UTM Coordinates in NAD 27 (meters): Zone 15; Easting: 314323; Northing: 3249481. Project Description: The applicant proposes to construct a new barge dock within an existing terminal. The construction includes installation of 134 feet of bulkhead, placement of fill material into 0.02 acre of open water, and dredge

using mechanical and/or hydraulic excavation 0.55 acre of open water to a depth of 17 feet. The proposed barge dock will also require the installation of 6 new breasting/mooring dolphins. The applicant proposes to place the dredge material into the Shoal Point Dredge Material Placement Area. CCC Project No.: 09-0061-F1. Type of Application: U.S.A.C.E. permit application #SWG-2008-00255 is being evaluated under §10 of the Rivers and Harbors Act of 1899 (33 U.S.C.A. §403) and §404 of the Clean Water Act (33 U.S.C.A. §1344).

Applicant: Davis Petroleum Corporation; Location: The project is located within Sabine Lake, approximately 1 mile east of Port Arthur, in Jefferson County, Texas. The project can be located on the U.S.G.S. quadrangle map entitled: Port Acres, Texas. Approximate UTM Coordinates in NAD 27 (meters): Zone 15; Easting: 392996; Northing: 3307723. Project Description: The applicant proposes to install, operate and maintain structures and equipment necessary for oil and gas drilling, production and transportation activities. Such activities include installation of typical marine barges and keyways, shell and/or gravel pad, production structures with attendant facilities, and flowlines. For the construction of the shell and/or gravel pad, approximately 1,267 cubic yards of shell, gravel, or crushed rock will be discharged to construct a 190-foot-long by 60-foot-wide by at most a 3-foot-deep pad to position the marine barge. CCC Project No.: 09-0062-F1. Type of Application: U.S.A.C.E. permit application #SWG-2008-00567 is being evaluated under §10 of the Rivers and Harbors Act of 1899 (33 U.S.C.A. §403) and §404 of the Clean Water Act (33 U.S.C.A. §1344). Note: The consistency review for this project may be conducted by the Railroad Commission of Texas under §401 of the Clean Water Act (33 U.S.C.A. §1344).

Pursuant to §306(d)(14) of the Coastal Zone Management Act of 1972 (16 U.S.C.A. §§1451-1464), as amended, interested parties are invited to submit comments on whether a proposed action is or is not consistent with the Texas Coastal Management Program goals and policies and whether the action should be referred to the Coastal Coordination Council for review.

Further information on the applications listed above, including a copy the consistency certifications for inspection, may be obtained from Ms. Tammy Brooks, Consistency Review Coordinator, Coastal Coordination Council, P.O. Box 12873, Austin, Texas 78711-2873, or tammy.brooks@glo.state.tx.us. Comments should be sent to Ms. Brooks at the above address or by fax at (512) 475-0680.

TRD-200806641

Larry L. Laine

Chief Clerk/Deputy Land Commissioner, General Land Office

Coastal Coordination Council

Filed: December 19, 2008

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Notice of Funds Availability - Texas Coastal Management Program Grants Program

The Coastal Coordination Council (Council) files this Notice of Funds Availability to announce the availability of approximately $853,500 in §306/§306A federal grant funds under the Texas Coastal Management Program (CMP). The purpose of awarding these funds is to assist eligible applicants directly impacted by Hurricane Ike, which made landfall on Galveston Island as a category 2 hurricane on September 13, 2008. Hurricane Ike is expected to be third costliest natural disaster in the history of the nation behind Hurricanes Katrina and Andrew.

Funding will be limited to projects listed in this notice that directly assist with the long-term recovery and responsible redevelopment of the coastal areas impacted by Hurricane Ike.

Except as modified below, the Application Guidance for Grant Cycle #14 dated April 2008 applies to proposals pursuant to this RFP. Applicants who submitted a Grant Cycle #14 final application by the October 15, 2008 deadline must resubmit their application to apply for this funding.

Eligible Applicants

The following entities, which were adversely affected by Hurricane Ike and declared a major disaster by the President in his disaster declaration for the State of Texas on September 13, 2008, are eligible to receive grants under this notice.

1. Incorporated cities within the coastal zone boundary.

2. County governments within the coastal zone boundary.

3. Texas state agencies.

4. Texas public colleges/universities.

5. Subdivisions of the state with jurisdiction in the coastal zone (e.g., navigation districts, port authorities, river authorities, and Soil and Water Conservation Districts with jurisdiction in the coastal zone).

6. Councils of governments and other regional governmental entities within the coastal zone boundary.

7. The Galveston Bay Estuary Program.

8. Nonprofit organizations located in Texas that are nominated by an eligible entity in categories 1 - 8 above. A nomination may take the form of a resolution or letter from a responsible official of an entity in categories 1 - 8. The nominating entity is not expected to financially or administratively contribute to the management and implementation of the proposed project.

Project Location

All projects must be located within the CMP boundary and within the counties determined to have been adversely affected by the catastrophe and declared a major disaster by the President in his major disaster declaration for the State of Texas on September 13, 2008. These counties are: Calhoun, Matagorda, Brazoria, Harris, Galveston, Chambers, Jefferson and Orange.

Funding Preferences and Matching Requirement

The Council will consider funding individual projects up to $150,000 (CMP portion only). The applicant must provide a local match of 40% of the total project cost to comply with federal matching requirements. For example, if an applicant is proposing a project that costs $250,000, the most that can be requested in CMP funding is $150,000. The applicant must provide $100,000 (or 40% of the total project cost) in local match. **Federal funds, received directly or passed-through by a state agency, cannot be used as match.**

Eligible Projects

The Council will accept the following types of projects. The projects are not listed in order of preference.

Non-Construction (§306):

1. Post-storm analysis of impacts to coastal natural resource areas.

2. Cost-benefit analysis of implementing setbacks for beachfront construction.

3. Scientific studies to determine where the natural line of vegetation was impacted and where it recovered on the beachfront one year after Hurricane Ike made landfall.

Construction (§306A):

1. Public access improvement projects.

2. Dune restoration projects.

Scoring Criteria

1. Does this project help implement a local plan to mitigate the impacts of natural hazards? (25 points.)

2. Will this project result in improved community resiliency to natural hazards? (25 points.)

3. Does the project have a direct or indirect beneficial economic or financial impact to the community? (10 points.)

4. Does the applicant document community or local government support for the project? (15 points.)

5. Does the applicant describe/document it is capable of administering and completing the project within an 18-month period? (15 points.)

6. Does the project budget appear reasonable/accurate? (10 points.)

Guidance and Application Package

To obtain a copy of the CMP Grant Cycle #14 Guidance and Application Package, please contact Melissa Porter at (512) 475-1393, (800) 998-4GLO or at melissa.porter@glo.state.tx.us. The requirements to receive federal grant funds are outlined in the guidance. Written requests for the Guidance and Application Package should be addressed to: Coastal Coordination Council, CMP Grants Program, c/o Texas General Land Office (GLO), 1700 North Congress Avenue, Room 335, Austin, Texas 78711-2873. The Guidance and Application Package is also available on the GLO's website at: http://www.glo.state.tx.us/coastal/grants/index.html.

Deadline

The deadline for receiving final grant applications is Wednesday, April 8, 2009 by 5:00 p.m. Final grant applications must be mailed (regular, express, or certified) or hand-delivered to: Coastal Coordination Council, CMP Grants Program, c/o Texas General Land Office, 1700 North Congress Avenue, Room 335, Austin, Texas 78701-1495. Facsimiles, electronic mail transmissions, and applications postmarked on or after the due date and time will not be accepted.

TRD-200806642
Larry L. Laine
Chief Clerk/Deputy Land Commissioner, General Land Office
Coastal Coordination Council
Filed: December 19, 2008

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Texas Commission on Environmental Quality

Agreed Orders

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Agreed Orders (AOs) in accordance with Texas Water Code (the Code), §7.075. Section 7.075 requires that before the commission may approve the AOs, the commission shall allow the public an opportunity to submit written comments on the proposed AOs. Section 7.075 requires that notice of the proposed orders and the opportunity to comment must be published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **February 2, 2009.** Section 7.075 also requires that the commission promptly consider any written comments received and that the commission may withdraw or withhold approval of an AO if a comment discloses facts or considerations that indicate that consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's jurisdiction or the commission's orders and permits issued in accordance with the commission's regulatory authority. Additional notice of changes to a proposed AO is not required to be published if those changes are made in response to written comments.

A copy of each proposed AO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building C, 1st Floor, Austin, Texas 78753, (512) 239-2545 and at the applicable regional office listed as follows. Written comments about an AO should be sent to the enforcement coordinator designated for each AO at the commission's central office at P.O. Box 13087, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on February 2, 2009.** Written comments may also be sent by facsimile machine to the enforcement coordinator at (512) 239-2550. The commission enforcement coordinators are available to discuss the AOs and/or the comment procedure at the listed phone numbers; however, §7.075 provides that comments on the AOs shall be submitted to the commission in **writing.**

(1) COMPANY: AAEMS LLC dba Kwik Mart 2; DOCKET NUMBER: 2008-1487-PST-E; IDENTIFIER: RN102142049; LOCATION: Euless, Tarrant County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 Texas Administrative Code (TAC) §334.49(b)(3)(B) and the Code, §26.3475(d), by failing to inspect and test the protected component for electrical isolation; 30 TAC §334.49(c)(4) and the Code, §26.3475(d), by failing to have the cathodic protection system inspected and tested for operability and adequacy of protection; 30 TAC §334.50(b)(1)(A) and the Code, §26.3475(c)(1), by failing to ensure that all underground storage tanks (USTs) are monitored; 30 TAC §334.50(d)(1)(B)(ii) and the Code, §26.3475(c)(1), by failing to conduct reconciliation of detailed inventory control records; 30 TAC §334.50(d)(1)(B)(iii)(I) and the Code, §26.3475(c)(1), by failing to record inventory volume measurement for regulated substance inputs, withdrawals, and the amount still remaining in the tank each operating day; 30 TAC §334.48(c), by failing to conduct effective manual or automatic inventory control procedures for all USTs; 30 TAC §334.45(c)(3)(A), by failing to install an emergency shutoff valve on each pressurized delivery or product line and ensure that it is securely anchored at the base of the dispenser; 30 TAC §115.246(1) and (4) and Texas Health and Safety Code (THSC), §382.085(b), by failing to maintain Stage II records at the station and make them immediately available for inspection; and 30 TAC §115.242(3)(K) and THSC, §382.085(b), by failing to maintain the Stage II vapor recovery system (VRS) in proper operating condition; PENALTY: $9,521; ENFORCEMENT COORDINATOR: Judy Kluge, (817) 588-5800; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(2) COMPANY: American Acryl L.P.; DOCKET NUMBER: 2008-1553-AIR-E; IDENTIFIER: RN101379287; LOCATION: Pasadena, Harris County; TYPE OF FACILITY: chemical manufacturing plant; RULE VIOLATED: 30 TAC §122.143(4) and §122.146(1), Federal Operating Permit (FOP) Number 2655, General Terms and Conditions (GTC), and THSC, §382.085(b), by failing to submit the annual compliance certification (ACC) form; and 30 TAC §122.143(4) and §122.145(2)(C), FOP Number 2655, GTC, and THSC, §382.085(b), by failing to timely submit the deviation report; PENALTY: $3,625; ENFORCEMENT COORDINATOR: Roshondra Lowe, (713) 767-3500; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(3) COMPANY: Belvan Corporation; DOCKET NUMBER: 2008-1389-AIR-E; IDENTIFIER: RN100214022; LOCATION: near Midland, Crockett County; TYPE OF FACILITY: natural gas processing plant; RULE VIOLATED: 30 TAC §116.115(b)(2)(F), New Source Review (NSR) Permit Number 9824A, General Condition

Number 8, and THSC, §382.085(b), by failing to prevent unauthorized emissions; 30 TAC §§111.111(a)(4)(A)(ii), 116.115(c), and 122.143(4), NSR Permit Number 9824A, Special Condition (SC) Numbers 2, 3, 6, and 7, General Operating Permit (GOP) Number O-00326, Condition Number (b)(8), and THSC, §382.085(b), by failing to maintain records; 30 TAC §116.115(c), NSR Permit Number 9824A, SC Number 5, 40 Code of Federal Regulations (CFR) §60.18(f)(2), and THSC, §382.085(b), by failing to monitor the pilot flame of the emergency flare with a thermocouple or infrared monitor; 30 TAC §101.201(a)(1) and THSC, §382.085(b), by failing to report a reportable emissions event within 24 hours after the discovery; and 30 TAC §122.145(2)(A), GOP Number O-00326, Condition (b)(2), and THSC, §382.085(b), by failing to report deviations; PENALTY: $133,900; ENFORCEMENT COORDINATOR: Trina Grieco, (210) 490-3096; REGIONAL OFFICE: 622 South Oakes, Suite K, San Angelo, Texas 76903-7035, (325) 655-9479.

(4) COMPANY: Channel Energy Center, LP; DOCKET NUMBER: 2008-1476-AIR-E; IDENTIFIER: RN100213107; LOCATION: Pasadena, Harris County; TYPE OF FACILITY: power generation plant; RULE VIOLATED: 30 TAC §122.143(4) and §122.146(1) and (2), FOP Number O-02084, GTC, and THSC, §382.085(b), by failing to submit an annual compliance certification report; and 30 TAC §122.143(4) and §122.145(2)(B), FOP Number O-02084, GTC, and THSC, §382.085(b), by failing to include a calendar day within the semi-annual deviation reporting period; PENALTY: $2,017; ENFORCEMENT COORDINATOR: James Nolan, (512) 239-6634; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(5) COMPANY: Chevron U.S.A. Inc.; DOCKET NUMBER: 2008-1358-PST-E; IDENTIFIER: RN102483641; LOCATION: Panna Maria, Karnes County; TYPE OF FACILITY: USTs; RULE VIOLATED: 30 TAC §334.47(a)(2), by failing to permanently remove from service, two USTs; and 30 TAC §334.7(d)(3), by failing to provide an amended registration for any change or additional information; PENALTY: $6,300; ENFORCEMENT COORDINATOR: Michael Pace, (817) 588-5800; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(6) COMPANY: City of Cranfills Gap; DOCKET NUMBER: 2008-1445-PWS-E; IDENTIFIER: RN101384170; LOCATION: Cranfills Gap, Bosque County; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.41(c)(3)(K), by failing to provide a casing vent that is covered with a 16-mesh or finer corrosion-resistant screen; 30 TAC §290.42(e)(4)(A), by failing to provide a small bottle of fresh ammonia solution for testing for chlorine leakage; 30 TAC §290.42(j), by failing to provide documentation that the calcium hypochlorite used in treatment of the water conforms to American National Standards Institute/National Sanitation Foundation Standard 60; 30 TAC §290.44(h)(4), by failing to have backflow prevention assemblies tested and certified to be operating within specifications at least annually; 30 TAC §290.46(j), by failing to complete a customer service inspection certificate; 30 TAC §290.46(m)(4), by failing to maintain all water treatment units, distribution system lines, and related appurtenances in a watertight condition; 30 TAC §290.46(s)(1), by failing to calibrate well meters at least once every three years; and 30 TAC §290.46(n)(3), by failing to keep in file and make available for commission review copies of well completion data; PENALTY: $787; ENFORCEMENT COORDINATOR: Yuliya Dunaway, (210) 440-3096; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(7) COMPANY: Diamond Water Company dba River Bend Estates; DOCKET NUMBER: 2008-1392-PWS-EIDENTIFIER: RN101221257; LOCATION: Bandera County; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.45(b)(1)(C)(iii), by failing to provide two or more service pumps having a total capacity of two gallons per minute (gpm) per connection; 30 TAC §290.45(b)(1)(C)(iv) and THSC, §341.0315(c), by failing to provide a pressure tank capacity of 20 gallons per connection; and 30 TAC §290.46(m)(4), by failing to maintain the water system's ground storage tank in a watertight condition; PENALTY: $280; ENFORCEMENT COORDINATOR: Amanda Henry, (713) 767-3500; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(8) COMPANY: Equistar Chemicals, LP; DOCKET NUMBER: 2008-1085-AIR-E; IDENTIFIER: RN100542281; LOCATION: Channelview, Harris County; TYPE OF FACILITY: chemical manufacturing plant; RULE VIOLATED: 30 TAC §116.115(c), NSR Permit Numbers 1768 and 2936, SC Number 1, and THSC, §382.085(b), by failing to prevent unauthorized emissions; PENALTY: $16,550; Supplemental Environmental Project (SEP) offset amount of $6,620 applied to Texas Parent Teacher Association - *Clean School Bus Program;* ENFORCEMENT COORDINATOR: James Nolan, (512) 239-6634; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(9) COMPANY: City of Evant; DOCKET NUMBER: 2008-0584-MWD-E; IDENTIFIER: RN101920403; LOCATION: Evant, Coryell County; TYPE OF FACILITY: wastewater treatment; RULE VIOLATED: 30 TAC §305.125(1), Texas Pollutant Discharge Elimination System (TPDES) Permit Number WQ0011011001, Effluent Limitations and Monitoring Requirements Numbers 1 and 6, and the Code, §26.121(a), by failing to comply with the permitted effluent limitations for dissolved oxygen, five-day biochemical oxygen demand, and total suspended solids (TSS); PENALTY: $10,335; ENFORCEMENT COORDINATOR: Trina Grieco, (210) 490-3096; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(10) COMPANY: Gerene Ferguson; DOCKET NUMBER: 2008-1159-PST-E; IDENTIFIER: RN101787885; LOCATION: Lubbock, Lubbock County; TYPE OF FACILITY: UST; RULE VIOLATED: 30 TAC §334.10(b)(1)(B), by failing to maintain required records pertaining to the UST system; 30 TAC §334.50(a)(1) and (b)(2)(A)(i)(III) and (ii), by failing to provide a method of release detection; and 30 TAC §37.815(a) and (b), by failing to demonstrate acceptable financial assurance; PENALTY: $5,748; ENFORCEMENT COORDINATOR: James Nolan, (512) 239-6634; REGIONAL OFFICE: 5012 50th Street, Suite 100, Lubbock, Texas 79414-3426, (806) 796-7092.

(11) COMPANY: G & J INTERNATIONAL, INC. dba Sunny's Food Mart 3; DOCKET NUMBER: 2008-1344-PST-E; IDENTIFIER: RN101546588; LOCATION: Lewisville, Denton County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §115.248(1) and THSC, §382.085(b), by failing to ensure that at least one station representative received training in the operation and maintenance of the Stage II VRS and each employee received in-house Stage II vapor recovery training regarding the purpose and correct operation of the Stage II equipment; 30 TAC §115.245(2) and THSC, §382.085(b), by failing to verify proper operation of the Stage II equipment; 30 TAC §115.242(1)(C) and THSC, §382.085(b), by failing to upgrade the Stage II equipment to onboard refueling vapor recovery compatible systems; 30 TAC §115.242(3)(A) and THSC, §382.085(b), by failing to maintain the Stage II equipment in proper operating condition; and 30 TAC §115.242(9) and THSC, §382.085(b), by failing to post operating instructions conspicuously on the front of each gasoline dispensing pump equipped with Stage II equipment; PENALTY: $4,700; ENFORCEMENT COORDINATOR:

Steven Lopez, (512) 239-1896; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(12) COMPANY: City of Gatesville; DOCKET NUMBER: 2008-1361-MWD-E; IDENTIFIER: RN101613685; LOCATION: Coryell County; TYPE OF FACILITY: wastewater treatment plant; RULE VIOLATED: 30 TAC §305.125(4), TPDES Permit Number WQ0010176002, Permit Conditions Number 2.g., and the Code, §26.121(a), by failing to prevent an unauthorized discharge of wastewater; 30 TAC §305.125(9)(A) and TPDES Permit Number WQ0010176002, Monitoring and Reporting Requirements Number 7.a., by failing to report an unauthorized discharge to the TCEQ within the timeframes specified by the permit; 30 TAC §305.125(9)(A) and TPDES Permit Number WQ0010176002, Monitoring and Reporting Requirements Number 7.a., by failing to submit all required information on a noncompliance notification; and 30 TAC §305.125(5) and TPDES Permit Number WQ0010176002, Operational Requirements Number 1, by failing to ensure that all systems of collection, treatment, and disposal are properly operated and maintained; PENALTY: $23,000; SEP offset amount of $23,000 applied to Texas Association of Resource Conservation and Development Areas, Inc. - Water or Wastewater Treatment Assistance; ENFORCEMENT COORDINATOR: Heather Brister, (254) 751-0335; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(13) COMPANY: Glenwood Water Supply Corporation; DOCKET NUMBER: 2008-1393-PWS-E; IDENTIFIER: RN101436780; LOCATION: Upshur County; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.45(b)(1)(D)(ii) and THSC, §341.0315(c), by failing to provide a total storage capacity of 200 gallons per connection; 30 TAC §290.41(c)(1)(F), by failing to provide sanitary control easements; 30 TAC §290.42(e)(3)(D), by failing to provide disinfection facilities for determining the amount of disinfectant used daily as well as the amount of disinfectant remaining for use; 30 TAC §290.42(1), by failing to compile and maintain a plant operations manual for operator review and reference; 30 TAC §290.43(c)(8), by failing to maintain the facility's storage tank at plant number four in strict accordance with current American Water Works Association (AWWA) design standards; 30 TAC §290.43(d)(3), by failing to provide the pressure tank at plant number three with a device to readily determine air-water-volume; 30 TAC §290.43(d)(2), by failing to provide the pressure tank at plant number three with a pressure release device; 30 TAC §290.46(m), by failing to initiate maintenance and housekeeping practices to ensure the good working condition and general appearance of the system's facilities and equipment; 30 TAC §290.46(v), by failing to ensure that all water system electrical wiring is securely installed in compliance with a local or national electrical code; 30 TAC §290.121(a) and (b), by failing to make available for commission review a complete up-to-date chemical and microbiological monitoring plan; 30 TAC §290.46(n)(2), by failing to provide an up-to-date map of the distribution system; 30 TAC §290.46(f)(2), (3)(A)(i)(II) and (ii)(II), by failing to provide water system records to commission personnel at the time of the investigation; and 30 TAC §290.45(b)(1)(D)(iv) and THSC, §341.0315(c), by failing to provide an elevated storage capacity of 100 gallons per connection; PENALTY: $3,003; ENFORCEMENT COORDINATOR: Epifanio Villareal, (361) 825-3100; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

(14) COMPANY: City of Hale Center; DOCKET NUMBER: 2008-1644-PWS-E; IDENTIFIER: RN101383982; LOCATION: Hale Center, Hale County; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.43(c)(4) and TCEQ Agreed Order Docket Number 2007-1402-PWS-E, Ordering Provision Number 3.b.ii., by failing to provide a pressure indicator on the facility's elevated storage tank; and 30 TAC §290.46(f)(2) and TCEQ Agreed Order Docket Number 2007-1402-PWS-E, Ordering Provision Number 3.a.i., by failing to provide facility records to commission personnel at the time of the investigation; PENALTY: $336; ENFORCEMENT COORDINATOR: Andrea Linson-Mgbeoduru, (512) 239-1482; REGIONAL OFFICE: 5012 50th Street, Suite 100, Lubbock, Texas 79414-3426, (806) 796-7092.

(15) COMPANY: Jeske Construction Company; DOCKET NUMBER: 2008-1419-WQ-E; IDENTIFIER: RN101560324; LOCATION: Dallas, Dallas County; TYPE OF FACILITY: construction company; RULE VIOLATED: the Code, §26.121, by failing to prevent the unauthorized discharge of lime slurry into or adjacent to waters in the state; PENALTY: $7,500; ENFORCEMENT COORDINATOR: Samuel Short, (512) 239-5363; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(16) COMPANY: Johnson Plate and Tower Fabrication, Inc.; DOCKET NUMBER: 2008-1519-AIR-E; IDENTIFIER: RN100819242; LOCATION: Canutillo, El Paso County; TYPE OF FACILITY: steel tubular tower manufacturing plant for wind turbines; RULE VIOLATED: 30 TAC §106.433(7)(A), 40 CFR §63.3890(b)(1), and THSC, §382.085(b), by failing to comply with the permit by rule for surface coating; and 30 TAC §116.110(a) and THSC, §382.085(b) and §382.0518(a), by failing to obtain authorization prior to conducting surface coating activities; PENALTY: $12,250; ENFORCEMENT COORDINATOR: Craig Fleming, (512) 239-5806; REGIONAL OFFICE: 401 East Franklin Avenue, Suite 560, El Paso, Texas 79901-1212, (915) 834-4949.

(17) COMPANY: Lucite International, Inc.; DOCKET NUMBER: 2008-1293-AIR-E; IDENTIFIER: RN102736089; LOCATION: Nederland, Jefferson County; TYPE OF FACILITY: industrial organic chemical plant; RULE VIOLATED: 30 TAC §§113.120, 115.112(a)(1), 116.115(c), and 122.143(4), 40 CFR §63.120(d)(5), FOP Number O-01960, GTC and SC Numbers 1A, 1D, 4, and 19, NSR Air Permit Number 1743, SC Numbers 2 and 10, and THSC, §382.085(b), by failing to maintain the required water flow; and 30 TAC §§116.115(b)(2)(F) and (c), 116.116(a)(1), and 112.143(4), FOP Number O-01960, GTC, and SC Numbers 16 and 19, NSR Air Permit Number 1743, SC Number 1, and THSC, §382.085(b), by failing to maintain emission rates below the allowable emission limits for acrylonitrile; PENALTY: $28,750; SEP offset amount of $11,500 applied to Jefferson County: Retrofit/Replacement of Heavy Equipment and Vehicles with Alternative Fueled Equipment and Vehicles; ENFORCEMENT COORDINATOR: Daniel Siringi, (409) 898-3838; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1830, (409) 898-3838.

(18) COMPANY: Macedonia Eylau Municipal Utility District 1; DOCKET NUMBER: 2008-1574-PWS-E; IDENTIFIER: RN101451920; LOCATION: Bowie County; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.46(f)(2) and (3)(A)(ii)(II) and (iv), by failing to maintain a record of water works operation and maintenance activities and make it available for review during inspections; 30 TAC §290.46(j), by failing to complete a customer service inspection certificate; 30 TAC §290.121(a), by failing to develop and maintain an up-to-date chemical and microbiological monitoring plan; 30 TAC §290.43(e), by failing to maintain an intruder-resistant fence in good condition; 30 TAC §290.43(c)(8), by failing to maintain the water system's elevated storage tank in strict accordance with current AWWA standards; 30 TAC §290.46(m), by failing to initiate maintenance and housekeeping practices to ensure good working condition and general appearance of the system's facilities and equipment; 30 TAC §290.46(n)(1), by failing to maintain accurate and up-to-date detailed as built-plans and specifications

for the elevated storage tank; 30 TAC §290.110(e)(4), by failing to properly complete the disinfection level quarterly reports for the facility each quarter; 30 TAC §290.45(b)(1)(D)(iv) and THSC, §341.0315(c), by failing to provide an elevated storage capacity of 100 gallons per connection; and 30 TAC §290.45(b)(1)(D)(ii) and THSC, §341.0315(c), by failing to provide a total storage capacity of 200 gallons per connection; PENALTY: $3,239; ENFORCEMENT COORDINATOR: Yuliya Dunaway, (210) 490-3096; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

(19) COMPANY: Metroplex Retaining Walls, Inc.; DOCKET NUMBER: 2008-1334-WQ-E; IDENTIFIER: RN100800896; LOCATION: Euless, Tarrant County; TYPE OF FACILITY: concrete production plant; RULE VIOLATED: 30 TAC §305.125(1), TPDES General Permit Number TXG110585, Part III, Permit Requirements, Section A, and the Code, §26.121(a), by failing to comply with the permitted effluent limitations; 30 TAC §305.125(1) and §319.5(b) and TPDES General Permit Number TXG110585, Part III, Permit Requirements, Section A, by failing to collect effluent samples for analysis of the permitted parameters and estimate discharge flows; and 30 TAC §305.125(17) and TPDES General Permit Number TXG110585, Part III, Permit Requirements, Section D.3., by failing to submit the required toxicity report; PENALTY: $17,876; ENFORCEMENT COORDINATOR: Tom Jecha, (512) 239-2576; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(20) COMPANY: Mitsubishi Caterpillar Forklift America, Inc.; DOCKET NUMBER: 2008-1469-AIR-E; IDENTIFIER: RN100219161; LOCATION: Houston, Harris County; TYPE OF FACILITY: forklift manufacturing plant; RULE VIOLATED: 30 TAC §122.146(2) and THSC, §382.085(b), by failing to submit a Title V compliance certification; PENALTY: $1,625; ENFORCEMENT COORDINATOR: Danielle Porras, (512) 239-2602; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(21) COMPANY: Monsanto Ag Products, LLC; DOCKET NUMBER: 2008-1314-AIR-E; IDENTIFIER: RN100218940; LOCATION: Plainview, Floyd County; TYPE OF FACILITY: cotton processing plant; RULE VIOLATED: 30 TAC §122.143(4) and §122.146(2), FOP Number O-2701, GTC, and THSC, §382.085(b), by failing to submit the permit compliance certification; PENALTY: $1,875; ENFORCEMENT COORDINATOR: Jeremy Escobar, (512) 239-1460; REGIONAL OFFICE: 5012 50th Street, Suite 100, Lubbock, Texas 79414-3426, (806) 796-7092.

(22) COMPANY: Red River Redevelopment Authority; DOCKET NUMBER: 2008-1864-WQ-E; IDENTIFIER: RN101274231; LOCATION: Bowie County; TYPE OF FACILITY: biodiesel plant; RULE VIOLATED: 30 TAC §281.25(a)(4), by failing to obtain a multi-sector general permit; PENALTY: $700; ENFORCEMENT COORDINATOR: Melissa Keller, (512) 239-1768; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

(23) COMPANY: City of Shiner; DOCKET NUMBER: 2008-1685-MWD-E; IDENTIFIER: RN101919181; LOCATION: Shiner, Lavaca County; TYPE OF FACILITY: wastewater treatment; RULE VIOLATED: 30 TAC §305.125(1), TPDES Permit Number WQ0010280001, Effluent Limitations and Monitoring Requirements Number 1, and the Code, §26.121(a), by failing to comply with the permitted effluent limitations for TSS; PENALTY: $2,440; ENFORCEMENT COORDINATOR: Carlie Konkol, (361) 825-3100; REGIONAL OFFICE: 6300 Ocean Drive, Suite 1200, Corpus Christi, Texas 78412-5839, (361) 825-3100.

(24) COMPANY: South Rusk County Water Supply Corporation; DOCKET NUMBER: 2008-1551-PWS-E; IDENTIFIER: RN101393544; LOCATION: Laneville, Rusk County; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.44(d) and §290.46(r), by failing to operate the facility to maintain a minimum pressure of 35 pounds per square inch; 30 TAC §290.43(c)(8), by failing to maintain the facility's storage tanks in strict accordance with current AWWA standards; 30 TAC §290.45(b)(1)(D)(i) and THSC, §341.0315(c), by failing to provide two or more well shaving a total capacity of 0.6 gpm per connection; and 30 TAC §290.45(b)(1)(D)(iv) and THSC, §341.0315(c), by failing to provide an elevated storage capacity of 100 gallons per connection or a pressure tank capacity of 20 gallons per connection for the main pressure plane; PENALTY: $1,333; ENFORCEMENT COORDINATOR: Amanda Henry, (713) 767-3500; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

(25) COMPANY: Dona Stewart; DOCKET NUMBER: 2008-1257-PWS-E; IDENTIFIER: RN101194447; LOCATION: Atlanta, Cass County; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.109(f)(3) and §290.122(b)(2) and THSC, §382.0315(a), by exceeding the maximum contaminant level for total coliform and by failing to provide public notice; 30 TAC §290.109(c)(3)(A)(ii) and §290.122(b)(2), by failing to collect a set of repeat samples within 24 hours of being notified of a total coliform-positive sample result and by failing to provide public notice of the failure to collect repeat samples; and 30 TAC §290.109(c)(2)(F) and §290.122(b)(2), by failing to collect five routine distribution coliform samples during the month following a total coliform-positive sample result and by failing to provide public notice; PENALTY: $2,453; ENFORCEMENT COORDINATOR: Tel Croston, (512) 239-5717; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-37134, (903) 535-5100.

(26) COMPANY: TOTAL PETROCHEMICALS USA, INC.; DOCKET NUMBER: 2008-1382-AIR-E; IDENTIFIER: RN102457520; LOCATION: Port Arthur, Jefferson County; TYPE OF FACILITY: petrochemical; RULE VIOLATED: 30 TAC §122.143(4) and §122.146(2), FOP Number 1267, GTC, and THSC, §382.085(b), by failing to submit an annual permit compliance certification; PENALTY: $7,775; SEP offset amount of $3,110 applied to Jefferson County: Retrofit/Replacement of Heavy Equipment and Vehicles with Alternative Fueled Equipment and Vehicles; ENFORCEMENT COORDINATOR: Daniel Siringi, (409) 898-3838; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1830, (409) 898-3838.

(27) COMPANY: Tynan Water Supply Corporation; DOCKET NUMBER: 2008-1102-PWS-E; IDENTIFIER: RN102680238; LOCATION: Bee County; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.46(m)(4), by failing to maintain all water treatment units, storage and pressure maintenance facilities, distribution system lines, and related appurtenances in a watertight condition; PENALTY: $104; ENFORCEMENT COORDINATOR: Tel Croston, (512) 239-5717; REGIONAL OFFICE: 6300 Ocean Drive, Suite 1200, Corpus Christi, Texas 78412-5839, (361) 825-3100.

(28) COMPANY: Wagner & Brown, Limited; DOCKET NUMBER: 2008-1567-WR-E; IDENTIFIER: RN105609887; LOCATION: Harrison County; TYPE OF FACILITY: gas well site; RULE VIOLATED: 30 TAC §297.11 and the Code, §11.121, by failing to obtain a water rights permit; PENALTY: $575; ENFORCEMENT COORDINATOR: Evette Alvarado, (512) 239-2573; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 757013734, (903) 535-5100.

(29) COMPANY: West Hardin County Consolidated Independent School District; DOCKET NUMBER: 2008-1274-MWD-E; IDEN-

TIFIER: RN101518793; LOCATION: Hardin County; TYPE OF FACILITY: wastewater treatment plant; RULE VIOLATED: 30 TAC §305.125(17) and §319.7(d) and TPDES Permit Number WQ0011274001, Monitoring and Reporting Requirements Number 1, by failing to timely submit the discharge monitoring reports (DMRs); 30 TAC §305.125(17) and TPDES Permit Number WQ0011274001, Sludge Provisions, by failing to timely submit the annual sludge report; 30 TAC §305.125(1) and TPDES Permit Number WQ0011274001, Monitoring and Reporting Requirements Number 7.c, by failing to notify the TCEQ within five working days of becoming aware of an effluent permit excursion of 40% or greater; 30 TAC §305.125(5) and TPDES Permit Number WQ0011274001, Operational Requirements Number 1, by failing to ensure that all systems of collection, treatment, and disposal are properly operated and maintained; 30 TAC §305.125(4), TPDES Permit Number WQ0011274001, Permit Conditions 2.d., and the Code, §26.121(a)(1), by failing to prevent the unauthorized discharge and accumulation of solids in the receiving stream; 30 TAC §305.128(a) and TPDES Permit Number WQ0011274001, Monitoring and Reporting Requirements Number 10, by failing to have an authorized officer or agent sign the DMRs; and 30 TAC §305.126(b)(3) and TPDES Permit Number WQ0011274001, Sludge Provisions, Section I.A.3, by failing to give 180 days notice prior to a change in the sewage sludge disposal practice; PENALTY: $9,579; ENFORCEMENT COORDINATOR: Lauren Smitherman, (512) 239-5223; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1830, (409) 898-3838.

(30) COMPANY: Whirlwind Steel Buildings, Inc.; DOCKET NUMBER: 2008-1528-AIR-E; IDENTIFIER: RN100543917; LOCATION: Houston, Harris County; TYPE OF FACILITY: metal building fabrication plant; RULE VIOLATED: 30 TAC §§122.143(2), (4) and (15), 122.145(2)(A) and (B), 122.146(2), 122.165(a)(8), FOP Number O-02060, GTC, and THSC, §382.085(b), by failing to submit complete, accurate, and timely ACCs and the semi-annual deviation reports; PENALTY: $10,700; ENFORCEMENT COORDINATOR: Trina Grieco, (210) 490-3096; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

TRD-200806620
Kathleen C. Decker
Director, Litigation Division
Texas Commission on Environmental Quality
Filed: December 19, 2008

♦ ♦ ♦

Enforcement Orders

An agreed order was entered regarding Friend Enterprises Inc. dba Friendly Mart, Docket No. 2003-1045-PST-E on December 11, 2008 assessing $15,300 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Barham A. Richard, Staff Attorney at (512) 239-0600, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Evelio Morales dba Casino Grocery and dba Casino Grocery 2, Docket No. 2005-0547-PST-E on December 11, 2008 assessing $61,690 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Xavier Guerra, Staff Attorney at (210) 490-3096, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding Mohammed A. Swati dba Sheldon King Savers Food, Docket No. 2005-0602-PST-E on December 11, 2008 assessing $4,280 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Anna Cox, Staff Attorney at (512) 239-0600, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Chevron Phillips Chemical Company LP, Docket No. 2005-0859-AIR-E on December 11, 2008 assessing $20,200 in administrative penalties with $10,100 deferred.

Information concerning any aspect of this order may be obtained by contacting Laurencia Fasoyiro, Staff Attorney at (713) 422-8914, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding Name Investment, Inc. dba Highway Stop, Docket No. 2005-0868-PST-E on December 11, 2008 assessing $7,500 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Jacquelyn Boutwell, Staff Attorney at (512) 239-5846, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Lutenbaker-Coleman, Ltd., dba Sandy Hill Concrete fka Sandy Hill Redi-Mix Inc., Docket No. 2005-0869-WQ-E on December 11, 2008 assessing $5,945 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Xavier Guerra, Staff Attorney at (210) 490-3096, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding James Ramirez dba West Beauregard Service Center, Docket No. 2005-0893-PST-E on December 11, 2008 assessing $8,100 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Jacquelyn Boutwell, Staff Attorney at (512) 239-5846, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Vashu Samtani dba Countryside, Docket No. 2005-1523-PST-E on December 11, 2008 assessing $7,650 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Jacquelyn Boutwell, Staff Attorney at (512) 239-5846, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Betty Brown, Docket No. 2005-1856-MLM-E on December 11, 2008 assessing $6,000 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Gary Shiu, Staff Attorney at (713) 422-8916, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding BASF FINA Petrochemicals Limited Partnership, Docket No. 2005-1862-AIR-E on December 11, 2008 assessing $59,800 in administrative penalties with $29,900 deferred.

Information concerning any aspect of this order may be obtained by contacting Laurencia Fasoyiro, Staff Attorney at (713) 422-8914,

Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Asalah Inc. dba Town Tires and Auto Service, Docket No. 2006-0111-PST-E on December 11, 2008 assessing $6,000 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Kari Gilbreth, Staff Attorney at (512) 239-1320, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Garland Kimbrell dba Timber We'll Take It, Docket No. 2006-0395-MSW-E on December 11, 2008 assessing $2,100 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Jacquelyn Boutwell, Staff Attorney at (512) 239-5846, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding C. L. Castillo Builders, Inc., Docket No. 2006-0777-WQ-E on December 11, 2008 assessing $1,800 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Kari Gilbreth, Staff Attorney at (512) 239-1320, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding S. P. Holmes., Inc. dba Georgetown 66, Docket No. 2006-0866-PST-E on December 11, 2008 assessing $9,375 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Jacquelyn Boutwell, Staff Attorney at (512) 239-5846, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Bradley S. McClure and Heather L. McClure, Docket No. 2006-0921-MSW-E on December 11, 2008 assessing $2,005 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Kari Gilbreth, Staff Attorney at (512) 239-1320, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding Bluff Springs Food Mart, Inc. dba Bluff Springs Food Mart No. 2, Docket No. 2006-0925-PST-E on December 11, 2008 assessing $4,500 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Laurencia Fasoyiro, Staff Attorney at (713) 422-8914, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Shalynah, Inc. dba Sammys 3, Docket No. 2006-1001-PST-E on December 11, 2008 assessing $11,790 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Jacquelyn Boutwell, Staff Attorney at (512) 239-5846, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding JKY Store Inc. dba Saks Fine Cleaners, Docket No. 2006-1246-DCL-E on December 11, 2008 assessing $1,185 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Jennifer Cook, Staff Attorney at (512) 239-1873, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding ExxonMobil Oil Corporation, Docket No. 2006-1533-AIR-E on December 11, 2008 assessing $55,200 in administrative penalties with $27,600 deferred.

Information concerning any aspect of this order may be obtained by contacting Alfred Oloko, Staff Attorney at (713) 422-8918, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding BASF FINA Petrochemicals Limited Partnership, Docket No. 2006-1578-AIR-E on December 11, 2008 assessing $203,125 in administrative penalties with $101,562 deferred.

Information concerning any aspect of this order may be obtained by contacting Laurencia Fasoyiro, Staff Attorney at (713) 422-8914, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Chevron Phillips Chemical Company LP, Docket No. 2006-1598-AIR-E on December 11, 2008 assessing $92,677 in administrative penalties with $46,338 deferred.

Information concerning any aspect of this order may be obtained by contacting Laurencia Fasoyiro, Staff Attorney at (713) 422-8914, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding Kim Phuong Tran dba Kims Cleaners, Docket No. 2006-1694-DCL-E on December 11, 2008 assessing $1,185 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Rudy Calderon, Staff Attorney at (512) 239-0600, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding A.Z.H.E. Corporation dba Forest Conoco, Docket No. 2006-1710-PST-E on December 11, 2008 assessing $3,150 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Benjamin Thompson, Staff Attorney at (512) 239-0600, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding Seong D. Roh dba South Side Cleaners, Docket No. 2006-1854-DCL-E on December 11, 2008 assessing $1,185 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting James Sallans, Staff Attorney at (512) 239-0600, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Chevron Phillips Chemical Company LP, Docket No. 2006-1960-AIR-E on December 11, 2008 assessing $47,442 in administrative penalties with $23,721.

Information concerning any aspect of this order may be obtained by contacting Laurencia Fasoyiro, Staff Attorney at (713) 422-8914, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding Royce Richardson, Docket No. 2006-1961-MSW-E on December 11, 2008 assessing $1,100 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Dinniah Chahin, Staff Attorney at (512) 239-0600, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding WSWS Company, Docket No. 2006-1984-PWS-E on December 11, 2008 assessing $1,050 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Kari Gilbreth, Staff Attorney at (512) 239-1320, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Bilal Enterprises, Inc. dba Truck Stop 1, Docket No. 2006-2033-PST-E on December 11, 2008 assessing $4,080 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Mary Risner, Staff Attorney at (512) 239-6624, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding Van Der Horst U.S.A. Corporation, Docket No. 2006-2186-IHW-E on December 11, 2008 assessing $44,685 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Gary Shiu, Staff Attorney at (713) 422-8916, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Alberto Lopez, Docket No. 2008-0197-PST-E on December 11, 2008 assessing $6,300 in administrative penalties with $1,260 deferred.

Information concerning any aspect of this order may be obtained by contacting Steven Lopez, Enforcement Coordinator at (512) 239-1896, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding International Wood, LLC, Docket No. 2008-0236-AIR-E on December 11, 2008 assessing $2,375 in administrative penalties with $475 deferred.

Information concerning any aspect of this order may be obtained by contacting Samuel Short, Enforcement Coordinator at (512) 239-5363, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Humble, Docket No. 2008-0327-MWD-E on December 11, 2008 assessing $6,500 in administrative penalties with $1,300 deferred.

Information concerning any aspect of this order may be obtained by contacting Tom Jecha, Enforcement Coordinator at (512) 239-2576, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Dripping Springs Independent School District, Docket No. 2008-0403-MWD-E on December 11, 2008 assessing $9,450 in administrative penalties with $1,890 deferred.

Information concerning any aspect of this order may be obtained by contacting Cheryl Thompson, Enforcement Coordinator at (817) 588-5886, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Custom Water Co., L.L.C., Docket No. 2008-0417-PWS-E on December 11, 2008 assessing $3,737 in administrative penalties with $747 deferred.

Information concerning any aspect of this order may be obtained by contacting Richard Croston, Enforcement Coordinator at (512) 239-5717, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding S Fiberglass, Ltd., Docket No. 2008-0484-AIR-E on December 11, 2008 assessing $2,375 in administrative penalties with $475 deferred.

Information concerning any aspect of this order may be obtained by contacting James Nolan, Enforcement Coordinator at (512) 239-6634, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Nand Kishore dba Lucky Stop 1, Docket No. 2008-0588-PST-E on December 11, 2008 assessing $7,726 in administrative penalties with $1,545 deferred.

Information concerning any aspect of this order may be obtained by contacting Judy Kluge, Enforcement Coordinator at (817) 588-5825, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding CFF Recycling USA, Inc., Docket No. 2008-0675-AIR-E on December 11, 2008 assessing $1,550 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Terry Murphy, Enforcement Coordinator at (512) 239-5025, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Holy Trinity Episcopal School of Greater Houston, Inc., Docket No. 2008-0706-MWD-E on December 11, 2008 assessing $4,500 in administrative penalties with $900 deferred.

Information concerning any aspect of this order may be obtained by contacting Roshondra Lowe, Enforcement Coordinator at (713) 767-3553, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Laredo, Docket No. 2008-0713-MSW-E on December 11, 2008 assessing $2,625 in administrative penalties with $525 deferred.

Information concerning any aspect of this order may be obtained by contacting Michael Graham, Enforcement Coordinator at (806) 796-7092, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Kenedy Manor Nursing Homes, Inc., Docket No. 2008-0741-PWS-E on December 11, 2008 assessing $844 in administrative penalties with $168 deferred.

Information concerning any aspect of this order may be obtained by contacting Amanda Henry, Enforcement Coordinator at (713) 767-3672, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Caro Water Supply Corporation, Docket No. 2008-0761-PWS-E on December 11, 2008 assessing $2,312 in administrative penalties with $462 deferred.

Information concerning any aspect of this order may be obtained by contacting Andrea Linson-Mgbeoduru, Enforcement Coordinator at (512) 239-1482, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding UCAR Pipeline Incorporated, Docket No. 2008-0799-AIR-E on December 11, 2008 assessing $9,000 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Harvey Wilson, Enforcement Coordinator at (512) 239-0321, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Houston Unlimited Inc. Metal Processing, Docket No. 2008-0806-IHW-E on December 11, 2008 assessing $25,000 in administrative penalties with $5,000 deferred.

Information concerning any aspect of this order may be obtained by contacting Clinton Sims, Enforcement Coordinator at (512) 239-6933, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Oiltanking Beaumont Partners, L.P., Docket No. 2008-0844-AIR-E on December 11, 2008 assessing $5,400 in administrative penalties with $1,080 deferred.

Information concerning any aspect of this order may be obtained by contacting Daniel Siringi, Enforcement Coordinator at (409) 899-8799, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Cobra Stone, Inc., Docket No. 2008-0855-MLM-E on December 11, 2008 assessing $39,000 in administrative penalties with $7,800 deferred.

Information concerning any aspect of this order may be obtained by contacting Lauren Smitherman, Enforcement Coordinator at (512) 239-5223, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Pallet & Crating Co., Inc., Docket No. 2008-0880-AIR-E on December 11, 2008 assessing $1,425 in administrative penalties with $285 deferred.

Information concerning any aspect of this order may be obtained by contacting Jorge Ibarra, Enforcement Coordinator at (817) 588-5890, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding McClelland Water Supply Corporation, Docket No. 2008-0891-PWS-E on December 11, 2008 assessing $1,634 in administrative penalties with $327 deferred.

Information concerning any aspect of this order may be obtained by contacting Andrea Linson-Mgbeoduru, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding NuStar Terminals Texas, Inc., Docket No. 2008-0905-AIR-E on December 11, 2008 assessing $3,625 in administrative penalties with $725 deferred.

Information concerning any aspect of this order may be obtained by contacting Terry Murphy, Enforcement Coordinator at (512) 239-5025, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding C.B.H. Services, Inc., Docket No. 2008-0913-AIR-E on December 11, 2008 assessing $3,000 in administrative penalties with $600 deferred.

Information concerning any aspect of this order may be obtained by contacting Daniel Siringi, Enforcement Coordinator at (409) 899-8799, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding GOPDQ.NET, LLC dba Big K Environmental, Docket No. 2008-0917-MSW-E on December 11, 2008 assessing $8,625 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting John Shelton, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Donald Page dba Last Chance Shell, Docket No. 2008-0933-PST-E on December 11, 2008 assessing $6,243 in administrative penalties with $1,248 deferred.

Information concerning any aspect of this order may be obtained by contacting Wallace Myers, Enforcement Coordinator at (512) 239-6580, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding JERRY SPENCER, L.P. dba JJS Fastop 294, Docket No. 2008-0960-PST-E on December 11, 2008 assessing $4,546 in administrative penalties with $909 deferred.

Information concerning any aspect of this order may be obtained by contacting Elvia Maske, Enforcement Coordinator at (512) 239-0789, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Meheboob Momin dba M & S Grocery, Docket No. 2008-0985-PST-E on December 11, 2008 assessing $5,327 in administrative penalties with $1,065 deferred.

Information concerning any aspect of this order may be obtained by contacting Tom Greimel, Enforcement Coordinator at (512) 239-5690, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Acme Brick Company, Docket No. 2008-1001-AIR-E on December 11, 2008 assessing $2,925 in administrative penalties with $585 deferred.

Information concerning any aspect of this order may be obtained by contacting Terry Murphy, Enforcement Coordinator at (512) 239-5025, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding LCY Elastomers LP, Docket No. 2008-1013-AIR-E on December 11, 2008 assessing $3,650 in administrative penalties with $730 deferred.

Information concerning any aspect of this order may be obtained by contacting Roshondra Lowe, Enforcement Coordinator at (713) 767-3553, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Gulf South Pipeline Company, LP, Docket No. 2008-1022-AIR-E on December 11, 2008 assessing $2,000 in administrative penalties with $400 deferred.

Information concerning any aspect of this order may be obtained by contacting Bryan Elliott, Enforcement Coordinator at (512) 239-6162, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Storm Reconstruction Services, Inc., Docket No. 2008-1025-AIR-E on December 11, 2008 assessing $3,000 in administrative penalties with $600 deferred.

Information concerning any aspect of this order may be obtained by contacting Daniel Siringi, Enforcement Coordinator at (409) 899-8799, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Zaki Niazi, Docket No. 2008-1069-PST-E on December 11, 2008 assessing $7,875 in administrative penalties with $1,575 deferred.

Information concerning any aspect of this order may be obtained by contacting Wallace Myers, Enforcement Coordinator at (512) 239-6580, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Dirk De Boer dba New Benniger Dairy, Docket No. 2008-1110-AGR-E on December 11, 2008 assessing $2,100 in administrative penalties with $420 deferred.

Information concerning any aspect of this order may be obtained by contacting Merrilee Hupp, Enforcement Coordinator at (512) 239-4490, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Coastal Transport Co., Inc., Docket No. 2008-1157-PST-E on December 11, 2008 assessing $1,100 in administrative penalties with $220 deferred.

Information concerning any aspect of this order may be obtained by contacting Wallace Myers, Enforcement Coordinator at (512) 239-6580, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Viking Pools, LLC, Docket No. 2008-1172-AIR-E on December 11, 2008 assessing $15,750 in administrative penalties with $3,150 deferred.

Information concerning any aspect of this order may be obtained by contacting Miriam Hall, Enforcement Coordinator at (512) 239-1044, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Shy Investment, Inc. dba Times Market 52, Docket No. 2008-1202-PST-E on December 11, 2008 assessing $4,150 in administrative penalties with $830 deferred.

Information concerning any aspect of this order may be obtained by contacting Ross Fife, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding H & W Petroleum Company, Inc., Docket No. 2008-1219-WQ-E on December 11, 2008 assessing $1,875 in administrative penalties with $375 deferred.

Information concerning any aspect of this order may be obtained by contacting Pam Campbell, Enforcement Coordinator at (512) 239-4493, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Byron Rusk dba RMS Automotive, Docket No. 2008-1223-PST-E on December 11, 2008 assessing $4,250 in administrative penalties with $850 deferred.

Information concerning any aspect of this order may be obtained by contacting Craig Fleming, Enforcement Coordinator at (512) 239-5806, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Lindsey Contractors, Inc., Docket No. 2008-1260-AIR-E on December 11, 2008 assessing $850 in administrative penalties with $170 deferred.

Information concerning any aspect of this order may be obtained by contacting Craig Fleming, Enforcement Coordinator at (512) 239-5806, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Universal Corrosion Specialists, Inc., Docket No. 2008-1292-AIR-E on December 11, 2008 assessing $900 in administrative penalties with $180 deferred.

Information concerning any aspect of this order may be obtained by contacting Cheryl Thompson, Enforcement Coordinator at (817) 588-5886, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A field citation was entered regarding Kendrick Oil Company, Docket No. 2008-1501-PST-E on December 11, 2008 assessing $875 in administrative penalties.

Information concerning any aspect of this citation may be obtained by contacting Melissa Keller, SEP Coordinator at (512) 239-1768, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A field citation was entered regarding Trademark Homes, Inc. Docket No. 2008-1505-WQ-E on December 11, 2008 assessing $700 in administrative penalties.

Information concerning any aspect of this citation may be obtained by contacting Melissa Keller, SEP Coordinator at (512) 239-1768, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A field citation was entered regarding Flat Rock Minerals, LLC, Docket No. 2008-1525-WR-E on December 11, 2008 assessing $875 in administrative penalties.

Information concerning any aspect of this citation may be obtained by contacting Melissa Keller, SEP Coordinator at (512) 239-1768, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

TRD-200806632
LaDonna Castañuela
Chief Clerk
Texas Commission on Environmental Quality
Filed: December 19, 2008

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Notice of Water Rights Applications

Notices issued December 16, 2008 through December 17, 2008.

APPLICATION NO. 12246; Elizabeth L. Carter, Applicant, 3764 Garnet, Houston, Texas 77005, has applied for a Water Use Permit to modify and maintain an existing impoundment structure and reservoir on the North Fork Guadalupe River, Guadalupe River Basin for recreational purposes in Kerr County, Texas. More information on the application and how to participate in the permitting process is given below. The application and fees were received on August 28, 2007. Additional information was received on October 24, 2007. The application was accepted for filing and declared administratively complete on October 30, 2007. Written public comments and requests for a public meeting should be submitted to the Office of Chief Clerk, at the address provided in the information section below, within 30 days of the date of newspaper publication of the notice.

APPLICATION NO. 5917A; The San Antonio River Authority (SARA), Applicant, P.O. Box 839980, San Antonio, Texas 78283, has applied for an amendment to Water Use Permit No. 5917 to divert and reuse groundwater-based return flows that will be discharged in the future for municipal, industrial, agricultural, and environmental flows (instream use, riverine habitat, or the bays and estuaries) in the San Antonio River Basin, Bexar County. More information on the application and how to participate in the permitting process is given below. The application and a portion of the required fees were received on July 14, 2008. Additional information and required fees were received on September 17, 2008 and October 3, 2008. The application was declared administratively complete and filed with the Office of

the Chief Clerk on October 8, 2008. Written public comments and requests for a public meeting should be submitted to the Office of the Chief Clerk, at the address provided in the information section below by January 22, 2009.

INFORMATION SECTION

To view the complete issued notice, view the notice on our web site at www.tceq.state.tx.us/comm_exec/cc/pub_notice.html or call the Office of the Chief Clerk at (512) 239-3300 to obtain a copy of the complete notice. When searching the web site, type in the issued date range shown at the top of this document to obtain search results.

A public meeting is intended for the taking of public comment, and is not a contested case hearing.

The Executive Director can consider approval of an application unless a written request for a contested case hearing is filed. To request a contested case hearing, you must submit the following: (1) your name (or for a group or association, an official representative), mailing address, daytime phone number, and fax number, if any: (2) applicant's name and permit number; (3) the statement "[I/we] request a contested case hearing;" and (4) a brief and specific description of how you would be affected by the application in a way not common to the general public. You may also submit any proposed conditions to the requested application which would satisfy your concerns. Requests for a contested case hearing must be submitted in writing to the TCEQ Office of the Chief Clerk at the address provided in the information section below.

If a hearing request is filed, the Executive Director will not issue the requested permit and may forward the application and hearing request to the TCEQ Commissioners for their consideration at a scheduled Commission meeting.

Written hearing requests, public comments or requests for a public meeting should be submitted to the Office of the Chief Clerk, MC 105, TCEQ, P.O. Box 13087, Austin, Texas 78711-3087. For information concerning the hearing process, please contact the Public Interest Counsel, MC 103, at the same address. For additional information, individual members of the general public may contact the Office of Public Assistance at 1-800-687-4040. General information regarding the TCEQ can be found at our web site at www.tceq.state.tx.us. Si desea información en Español, puede llamar al 1-800-687-4040.

TRD-200806631
LaDonna Castañuela
Chief Clerk
Texas Commission on Environmental Quality
Filed: December 19, 2008

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Proposal for Decision

The State Office of Administrative Hearings issued a Proposal for Decision and Order to the Texas Commission on Environmental Quality on December 17, 2008, in the matter of the Executive Director of the Texas Commission on Environmental Quality, Petitioner v. Joe McHaney dba Envirosol Environmental Services; SOAH Docket No. 582-07-1986; TCEQ Docket No. 2005-1742-MLM-E. The commission will consider the Administrative Law Judge's Proposal for Decision and Order regarding the enforcement action against Joe McHaney dba Envirosol Environmental Services on a date and time to be determined by the Office of the Chief Clerk in Room 201S of Building E, 12100 N. Interstate 35, Austin, Texas. This posting is Notice of Opportunity to Comment on the Proposal for Decision and Order. The comment period will end 30 days from date of this publication. Written public comments should be submitted to the Office of the Chief Clerk, MC-105, TCEQ, P.O. Box 13087, Austin, Texas 78711-3087. If you have any questions or need assistance, please contact Melissa Chao, Office of the Chief Clerk, (512) 239-3300.

TRD-200806633
LaDonna Castañuela
Chief Clerk
Texas Commission on Environmental Quality
Filed: December 19, 2008

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Texas Facilities Commission

Request for Proposals #303-9-10656-A

The Texas Facilities Commission (TFC), on behalf of the Texas Department of Criminal Justice (TDCJ), announces the issuance of Request for Proposals (RFP) #303-9-10656-A. TFC seeks a five (5) or ten (10) year lease of approximately 6,194 square feet of office space in Galveston County, Texas.

The deadline for questions is January 9, 2009, and the deadline for proposals is January 21, 2009, at 3:00 p.m. The award date is February 19, 2009. TFC reserves the right to accept or reject any or all proposals submitted. TFC is under no legal or other obligation to execute a lease on the basis of this notice or the distribution of a RFP. Neither this notice nor the RFP commits TFC to pay for any costs incurred prior to the award of a grant.

Parties interested in submitting a proposal may obtain information by contacting TFC Purchaser Sandy Williams at (512) 475-0453. A copy of the RFP may be downloaded from the Electronic State Business Daily at *http://esbd.cpa.state.tx.us/bid_show.cfm?bidid=80313.*

TRD-200806645
Kay Molina
General Counsel
Texas Facilities Commission
Filed: December 19, 2008

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Request for Proposals #303-9-10824

The Texas Facilities Commission (TFC), on behalf of the Department of Family and Protective Services, announces the issuance of Request for Proposals (RFP) #303-9-10824. TFC seeks a ten (10) year lease of approximately 3,941 sq. ft. of office space in Brownfield, Terry County, Texas.

The deadline for questions is January 2, 2009 and the deadline for proposals is January 16, 2009 at 3:00 p.m. The anticipated award date is February 20, 2009. TFC reserves the right to accept or reject any or all proposals submitted. TFC is under no legal or other obligation to execute a lease on the basis of this notice or the distribution of an RFP. Neither this notice nor the RFP commits TFC to pay for any costs incurred prior to the award of a grant.

Parties interested in submitting a proposal may obtain information by contacting TFC Purchaser Sandy Williams at (512) 475-0453. A copy of the RFP may be downloaded from the Electronic State Business Daily at *http://esbd.cpa.state.tx.us/bid_show.cfm?bidid=80310.*

TRD-200806644
Kay Molina
General Counsel
Texas Facilities Commission
Filed: December 19, 2008

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Hardeman County

Request for Comments and Proposals: Additional Medicaid Beds

Texas Department of Aging and Disability Services (DADS) rule 40 TAC §19.2322(h)(6) permits the county commissioners court of a rural county with a population of less than 100,000 and with no more than two Medicaid-Certified nursing facilities to request that DADS contract for additional Medicaid nursing facility beds in that county. This may be done without regard to the occupancy rate of available beds in the county.

The Hardeman County Commissioners Court is considering requesting that DADS contract for additional Medicaid nursing facility beds in Hardeman County. The Commissioners Court is soliciting public input and comments on whether the request should be made. Further, the Commissioners Court seeks proposals from persons interested in providing additional Medicaid beds in Hardeman County to determine if qualified entities are interested in submitting proposals to provide these additional Medicaid beds in Hardeman County. Comments and proposals may be submitted to Judge Ronald Ingram at P.O. Box 30, Hardeman County Courthouse, Quanah, Texas 79252-0030.

A public hearing to receive comments and proposals will be held in the Hardeman County Courthouse, Commissioners Courtroom, 300 Main Street, Quanah, Texas, on January 12, 2009 at 9:00 a.m. For additional information call (940) 663-2911.

TRD-200806649
Ronald Ingram
Judge
Hardeman County
Filed: December 19, 2008

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Department of State Health Services

Schedules of Controlled Substances

PURSUANT TO THE TEXAS CONTROLLED SUBSTANCES ACT, HEALTH AND SAFETY CODE, CHAPTER 481, THESE SCHEDULES SUPERCEDE PREVIOUS SCHEDULES AND CONTAIN THE MOST CURRENT VERSION OF THE SCHEDULES OF ALL CONTROLLED SUBSTANCES FROM THE PREVIOUS SCHEDULES AND MODIFICATIONS.

This annual publication of the Texas Schedules of Controlled Substances was signed by David L. Lakey, M. D., Commissioner of Health, and will take effect 21 days following publication of this notice in the *Texas Register*.

Additional information can be obtained by contacting the Department of State Health Services, Drugs and Medical Devices Group, P.O. Box 149347, Austin, Texas 78714-9347. The telephone number is (512) 834-6755 and the website address is http://www.dshs.state.tx.us/dmd.

SCHEDULES

Nomenclature: Controlled substances listed in these schedules are included by whatever official, common, usual, chemical, or trade name they may be designated.

SCHEDULE I

Schedule I consists of:

Schedule I opiates

The following opiates, including their isomers, esters, ethers, salts, and salts of isomers, esters, and ethers, unless specifically excepted, if the existence of these isomers, esters, ethers, and salts is possible within the specific chemical designation:

(1) Acetyl-alpha-methylfentanyl (N-[1-(1-methyl-2-phenethyl)-4-piperidinyl]-N-phenylacetamide);

(2) Allylprodine;

(3) Alphacetylmethadol (except levo-alphacetylmethadol, also known as levo-alpha-acetylmethadol, levomethadyl acetate, or LAAM);

(4) Alpha-methylfentanyl or any other derivative of Fentanyl;

(5) Alpha-methylthiofentanyl (N-[1-methyl-2-(2-thienyl) ethyl-4-piperidinyl]-N-phenyl-propanamide);

(6) Benzethidine;

(7) Beta-hydroxyfentanyl (N-[1-(2-hydroxy-2-phenethyl)-4-piperidinyl]-N-phenyl-propanamide);

(8) Beta-hydroxy-3-methylfentanyl (N-[1-(2-hydroxy-2-phenethyl)-3-methyl-4-piperidinyl]-N-phenylpropanamide);

(9) Betaprodine;

(10) Clonitazene;

(11) Diampromide;

(12) Diethylthiambutene;

(13) Difenoxin;

(14) Dimenoxadol;

(15) Dimethylthiambutene;

(16) Dioxaphetyl butyrate;

(17) Dipipanone;

(18) Ethylmethylthiambutene;

(19) Etonitazene;

(20) Etoxeridine;

(21) Furethidine;

(22) Hydroxypethidine;

(23) Ketobemidone;

(24) Levophenacylmorphan;

(25) Meprodine;

(26) Methadol;

(27) 3-methylfentanyl (N-[3-methyl-1-(2-phenylethyl)-4-piperidyl]-N-phenylpropanamide), its optical and geometric isomers;

(28) 3-methylthiofentanyl (N-[3-methyl-1-(2-thienyl)ethyl-4-piperidinyl]-N-phenylpropanamide);

(29) Moramide;

(30) Morpheridine;

(31) MPPP (1-methyl-4-phenyl-4-propionoxypiperidine);

(32) Noracymethadol;

(33) Norlevorphanol;

(34) Normethadone;

(35) Norpipanone;

(36) Para-fluorofentanyl (N-(4-fluorophenyl)-N-[1-(2-phenethyl)-4-piperidinyl]-propanamide);

(37) PEPAP (1-(2-phenethyl)-4-phenyl-4-acetoxypiperidine);

(38) Phenadoxone;

(39) Phenampromide;

(40) Phencyclidine;

(41) Phenomorphan;

(42) Phenoperidine;

(43) Piritramide;

(44) Proheptazine;

(45) Properidine;

(46) Propiram;

(47) Thiofentanyl (N-phenyl-N-[1-(2-thienyl)ethyl-4-piperidinyl]-propanamide);

(48) Tilidine; and

(49) Trimeperidine.

Schedule I opium derivatives

The following opium derivatives, their salts, isomers, and salts of isomers, unless specifically excepted, if the existence of these salts, isomers, and salts of isomers is possible within the specific chemical designation:

(1) Acetorphine;

(2) Acetyldihydrocodeine;

(3) Benzylmorphine;

(4) Codeine methylbromide;

(5) Codeine-N-Oxide;

(6) Cyprenorphine;

(7) Desomorphine;

(8) Dihydromorphine;

(9) Drotebanol;

(10) Etorphine (except hydrochloride salt);

(11) Heroin;

(12) Hydromorphinol;

(13) Methyldesorphine;

(14) Methyldihydromorphine;

(15) Monoacetylmorphine;

(16) Morphine methylbromide;

(17) Morphine methylsulfonate;

(18) Morphine-N-Oxide;

(19) Myrophine;

(20) Nicocodeine;

(21) Nicomorphine;

(22) Normorphine;

(23) Pholcodine; and

(24) Thebacon.

Schedule I hallucinogenic substances

Unless specifically excepted or unless listed in another schedule, a material, compound, mixture, or preparation that contains any quantity of the following hallucinogenic substances or that contains any of the substance's salts, isomers, and salts of isomers if the existence of the salts, isomers, and salts of isomers is possible within the specific chemical designation (for the purposes of this Schedule I hallucinogenic substances section only, the term "isomer" includes optical, position, and geometric isomers):

(1) Alpha-ethyltryptamine (some trade or other names: etryptamine; Monase; alpha ethyl-1H-indole-3-ethanamine; 3-(2-aminobutyl) indole; alpha-ET; AET);

(2) alpha-methyltryptamine (AMT), its isomers, salts, and salts of isomers;

(3) 4-bromo-2,5-dimethoxyamphetamine (some trade or other names: 4-bromo-2,5-dimethoxy-alpha-methylphenethylamine; 4-bromo-2,5-DMA);

(4) 4-bromo-2,5-dimethoxyphenethylamine (some trade or other names: Nexus; 2C-B; 2-(4-bromo-2,5-dimethoxyphenyl)-1-aminoethane; alpha-desmethyl DOB);

(5) 2,5-dimethoxyamphetamine (some trade or other names: 2,5-dimethoxy-alpha-methylphenethylamine; 2,5-DMA);

(6) 2,5-dimethoxy-4-ethylamphetamine (some trade or other names: DOET);

(7) 2,5-dimethoxy-4-(n)-propylthiophenethylamine (2C-T-7), its optical isomers, salts and salts of isomers;

(8) 5-methoxy-N,N-diisopropyltryptamine (5-MeO-DIPT), its isomers, salts, and salts of isomers;

(9) 5-methoxy-3,4-methylenedioxy-amphetamine;

(10) 4-methoxyamphetamine (some trade or other names: 4-methoxy-alpha-methylphenethylamine; paramethoxyamphetamine; PMA);

(11) 1-methyl-4-phenyl-1,2,5,6-tetrahydro-pyridine (MPTP);

(12) 4-methyl-2,5-dimethoxyamphetamine (some trade and other names: 4-methyl-2,5-dimethoxy-alpha-methyl-phenethylamine; "DOM"; and "STP");

(13) 3,4-methylenedioxy-amphetamine;

(14) 3,4-methylenedioxy-methamphetamine (MDMA, MDM);

(15) 3,4-methylenedioxy-N-ethylamphetamine (some trade or other names: N-ethyl-alpha-methyl-3,4(methylenedioxy)phenethylamine; N-ethyl MDA; MDE; MDEA);

(16) 3,4,5-trimethoxy amphetamine;

(17) N-hydroxy-3,4-methylenedioxyamphetamine (Also known as N-hydroxy MDA);

(18) Bufotenine (some trade and other names: 3-(beta-Dimethylaminoethyl)-5-hydroxyindole; 3-(2-dimethylaminoethyl)-5-indolol; N,N-dimethylserotonin; 5-hydroxy-N,N-dimethyltryptamine; mappine);

(19) Diethyltryptamine (some trade and other names: N,N-Diethyltryptamine; DET);

(20) Dimethyltryptamine (some trade and other names: DMT);

(21) Ethylamine Analog of Phencyclidine (some trade or other names: N-ethyl-1-phenylcyclohexylamine; (1-phenylcyclohexyl) ethylamine; N-(1-phenylcyclohexyl)-ethylamine; cyclohexamine; PCE);

(22) Ibogaine (some trade or other names: 7-Ethyl-6,6-beta, 7,8,9,10,12,13-octhydro-2-methoxy-6,9-methano-5H-pyrido[1',2':1,2] azepino [5,4-b] indole; taber-nanthe iboga);

(23) Lysergic acid diethylamide;

(24) Marihuana;

(25) Mescaline;

(26) N-benzylpiperazine (some other names: BZP; 1-benzylpiperazine), its optical isomers, salts and salts of isomers;

(27) N-ethyl-3-piperidyl benzilate;

(28) N-methyl-3-piperidyl benzilate;

(29) Parahexyl (some trade or other names: 3-Hexyl-1-hydroxy-7,8,9,10-tetrahydro-6,6,9-trimethyl-6H-dibenzo [b,d] pyran; Synhexyl);

(30) Peyote, unless unharvested and growing in its natural state, meaning all parts of the plant classified botanically as *Lophophora*, whether growing or not, the seeds of the plant, an extract from a part of the plant, and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds, or extracts;

(31) Psilocybin;

(32) Psilocin;

(33) Pyrrolidine analog of phencyclidine (some trade or other names: 1-(1-phenyl-cyclohexyl)-pyrrolidine, PCPy, PHP);

(34) Tetrahydrocannabinols;

meaning tetrahydrocannabinols naturally contained in a plant of the genus Cannabis (cannabis plant), as well as synthetic equivalents of the substances contained in the cannabis plant, or in the resinous extractives of such plant, and/or synthetic substances, derivatives, and their isomers with similar chemical structure and pharmacological activity to those substances contained in the plant, such as the following:

1 cis or trans tetrahydrocannabinol, and their optical isomers;

6 cis or trans tetrahydrocannabinol, and their optical isomers; and

3,4 cis or trans tetrahydrocannabinol, and its optical isomers.

(Since nomenclature of these substances is not internationally standardized, compounds of these structures, regardless of numerical designation of atomic positions covered);

(35) Thiophene analog of phencyclidine (some trade or other names: 1-[1-(2-thienyl) cyclohexyl] piperidine; 2-thienyl analog of phencyclidine; TPCP); and

(36) 1-[1-(2-thienyl)cyclohexyl]pyrrolidine (some trade or other names: TCPy).

Schedule I stimulants

Unless specifically excepted or unless listed in another schedule, a material, compound, mixture, or preparation that contains any quantity of the following substances having a stimulant effect on the central nervous system, including the substance's salts, isomers, and salts of isomers if the existence of the salts, isomers, and salts of isomers is possible within the specific chemical designation:

(1) Aminorex (some other names: aminoxaphen; 2-amino-5-phenyl-2-oxazoline; 4,5-dihydro-5-phenyl-2-oxazolamine);

(2) Cathinone (some trade or other names: 2-amino-1-phenyl-1-propanone; alpha-aminopropiophenone; 2-aminopropiophenone and norephedrone);

(3) Fenethylline;

(4) Methcathinone (some other names: 2-(methylamino)-propiophenone; alpha-(methylamino) propiophenone; 2-(methylamino)-1-phenylpropan-1-one; alpha-N-methylaminopropiophenone; monomethylpropion; ephedrone; N-methylcathinone; methylcathinone; AL-464; AL-422; AL-463; and UR1432);

(5) 4-methylaminorex;

(6) N-ethylamphetamine; and

(7) N,N-dimethylamphetamine (some other names: N,N-alpha-trimethylbenzene-ethaneamine; N,N-alpha-trimethylphenethylamine).

Schedule I depressants

Unless specifically excepted or unless listed in another schedule, a material, compound, mixture, or preparation that contains any quantity of the following substances having a depressant effect on the central nervous system, including the substance's salts, isomers, and salts of isomers if the existence of the salts, isomers, and salts of isomers is possible within the specific chemical designation:

(1) Gamma-hydroxybutyric acid (some other names include GHB; gamma-hydroxybutyrate; 4-hydroxybutyrate; 4-hydroxybutanoic acid; sodium oxybate; sodium oxybutyrate);

(2) Mecloqualone; and

(3) Methaqualone.

SCHEDULE II

Schedule II consists of:

Schedule II substances, vegetable origin or chemical synthesis

The following substances, however produced, except those narcotic drugs listed in other schedules:

(1) Opium and opiate, and a salt, compound, derivative, or preparation of opium or opiate, other than thebaine-derived butorphanol, naloxone and its salts, naltrexone and its salts, and nalmefene and its salts, but including:

(1-1) Codeine;

(1-2) Dihydroetorphine;

(1-3) Ethylmorphine;

(1-4) Etorphine hydrochloride;

(1-5) Granulated opium;

(1-6) Hydrocodone;

(1-7) Hydromorphone;

(1-8) Metopon;

(1-9) Morphine;

(1-10) Opium extracts;

(1-11) Opium fluid extracts;

(1-12) Oripavine

(1-13) Oxycodone;

(1-14) Oxymorphone;

(1-15) Powdered opium;

(1-16) Raw opium;

(1-17) Thebaine; and

(1-18) Tincture of opium.

(2) A salt, compound, isomer, derivative, or preparation of a substance that is chemically equivalent or identical to a substance described by Paragraph (1) of Schedule II substances, vegetable origin or chemical synthesis, other than the isoquinoline alkaloids of opium;

(3) Opium poppy and poppy straw;

(4) Cocaine, including:

(4-1) its salts, its optical, position, and geometric isomers, and the salts of those isomers; and

(4-2) coca leaves and a salt, compound, derivative, or preparation of coca leaves that is chemically equivalent or identical to a substance described by this paragraph, other than decocainized coca leaves or extractions of coca leaves that do not contain cocaine or ecgonine; and

(5) Concentrate of poppy straw, meaning the crude extract of poppy straw in liquid, solid, or powder form that contains the phenanthrene alkaloids of the opium poppy.

Opiates

The following opiates, including their isomers, esters, ethers, salts, and salts of isomers, if the existence of these isomers, esters, ethers, and salts is possible within the specific chemical designation:

(1) Alfentanil;

(2) Alphaprodine;

(3) Anileridine;

(4) Bezitramide;

(5) Carfentanil;

(6) Dextropropoxyphene, bulk (nondosage form);

(7) Dihydrocodeine;

(8) Diphenoxylate;

(9) Fentanyl;

(10) Isomethadone;

(11) Levo-alphacetylmethadol (some trade or other names: levo-alpha-acetylmethadol, levomethadyl acetate, LAAM);

(12) Levomethorphan;

(13) Levorphanol;

(14) Metazocine;

(15) Methadone;

(16) Methadone-Intermediate, 4-cyano-2-dimethylamino-4,4-diphenyl butane;

(17) Moramide-Intermediate, 2-methyl-3-morpholino-1,1-diphenyl-propane-carboxylic acid;

(18) Pethidine (meperidine);

(19) Pethidine-Intermediate-A, 4-cyano-1-methyl-4-phenylpiperidine;

(20) Pethidine-Intermediate-B, ethyl-4-phenylpiperidine-4-carboxylate;

(21) Pethidine-Intermediate-C, 1-methyl-4-phenylpiperidine-4-carboxylic acid;

(22) Phenazocine;

(23) Piminodine;

(24) Racemethorphan;

(25) Racemorphan;

(26) Remifentanil; and

(27) Sufentanil.

Schedule II stimulants

Unless listed in another schedule and except as provided by the Texas Controlled Substances Act, Health and Safety Code, §481.033, a material, compound, mixture, or preparation that contains any quantity of the following substances having a potential for abuse associated with a stimulant effect on the central nervous system:

(1) Amphetamine, its salts, optical isomers, and salts of its optical isomers;

(2) Methamphetamine, including its salts, optical isomers, and salts of optical isomers;

(3) Methylphenidate and its salts; and

(4) Phenmetrazine and its salts.

(5) Lisdexamfetamine, including its salts, isomers, and salts of its isomers.

Schedule II depressants

Unless listed in another schedule, a material, compound, mixture or preparation that contains any quantity of the following substances having a depressant effect on the central nervous system, including the substance's salts, isomers, and salts of isomers if the existence of the salts, isomers, and salts of isomers is possible within the specific chemical designation:

(1) Amobarbital;

(2) Glutethimide;

(3) Pentobarbital; and

(4) Secobarbital.

Schedule II hallucinogenic substances

(1) Nabilone (Another name for nabilone: (±)-trans-3-(1,1-dimethylheptyl)-6,6a,7,8, 10,10a-hexahydro-1-hydroxy-6,6-dimethyl-9H-dibenzo[b,d]pyran-9-one).

Schedule II precursors

Unless specifically excepted or listed in another schedule, a material, compound, mixture, or preparation that contains any quantity of the following substances:

(1) Immediate precursor to methamphetamine:

(1-1) Phenylacetone and methylamine if possessed together with intent to manufacture methamphetamine;

(2) Immediate precursor to amphetamine and methamphetamine:

(2-1) Phenylacetone (some trade or other names: phenyl-2-propanone; P2P; benzyl methyl ketone; methyl benzyl ketone); and

(3) Immediate precursors to phencyclidine (PCP):

(3-1) 1-phenylcyclohexylamine; and

(3-2) 1-piperidinocyclohexanecarbonitrile (PCC).

SCHEDULE III

Schedule III consists of:

Schedule III depressants

Unless listed in another schedule and except as provided by the Texas Controlled Substances Act, Health and Safety Code, §481.033, a material, compound, mixture, or preparation that contains any quantity of the following substances having a potential for abuse associated with a depressant effect on the central nervous system:

(1) a compound, mixture, or preparation containing amobarbital, secobarbital, pentobarbital, or any of their salts and one or more active medicinal ingredients that are not listed in a schedule;

(2) a suppository dosage form containing amobarbital, secobarbital, pentobarbital, or any of their salts and approved by the Food and Drug Administration for marketing only as a suppository;

(3) a substance that contains any quantity of a derivative of barbituric acid, or any salt of a derivative of barbituric acid, except those substances that are specifically listed in other schedules;

(4) Chlorhexadol;

(5) Any drug product containing gamma hydroxybutyric acid, including its salts, isoners, and salts of isomers, for which an application is approved under section 505 of the Federal Food Drug and Cosmetic Act;

(6) Ketamine, its salts, isomers, and salts of isomers. Some other names for ketamine: (±)-2-(2-chlorophenyl)-2-(methylamino)-cyclohexanone;

(7) Lysergic acid;

(8) Lysergic acid amide;

(9) Methyprylon;

(10) Sulfondiethylmethane;

(11) Sulfonethylmethane;

(12) Sulfonmethane; and

(13) Tiletamine and zolazepam or any salt thereof. Some trade or other names for a tiletamine-zolazepam combination product: Telazol. Some trade or other names for tiletamine: 2-(ethylamino)-2-(2-thienyl)-cyclohexanone. Some trade or other names for zolazepam: 4-(2-fluorophenyl)-6,8-dihydro-1,3,8-trimethyl-pyrazolo-[3,4-e][1,4]-diazepin-7(1H)-one, flupyrazapon.

Nalorphine

Schedule III narcotics

Unless specifically excepted or unless listed in another schedule:

(1) a material, compound, mixture, or preparation containing limited quantities of any of the following narcotic drugs, or any of their salts:

(1-1) not more than 1.8 grams of codeine, or any of its salts, per 100 milliliters or not more than 90 milligrams per dosage unit, with an equal or greater quantity of an isoquinoline alkaloid of opium;

(1-2) not more than 1.8 grams of codeine, or any of its salts, per 100 milliliters or not more than 90 milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts;

(1-3) not more than 300 milligrams of dihydrocodeinone (hydrocodone), or any of its salts, per 100 milliliters or not more than 15 milligrams per dosage unit, with a fourfold or greater quantity of an isoquinoline alkaloid of opium;

(1-4) not more than 300 milligrams of dihydrocodeinone (hydrocodone), or any of its salts, per 100 milliliters or not more than 15 milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts;

(1-5) not more than 1.8 grams of dihydrocodeine, or any of its salts, per 100 milliliters or not more than 90 milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts;

(1-6) not more than 300 milligrams of ethylmorphine, or any of its salts, per 100 milliliters or not more than 15 milligrams per dosage unit, with one or more active, non-narcotic ingredients in recognized therapeutic amounts;

(1-7) not more than 500 milligrams of opium per 100 milliliters or per 100 grams, or not more than 25 milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts; and

(1-8) not more than 50 milligrams of morphine, or any of its salts, per 100 milliliters or per 100 grams with one or more active, nonnarcotic ingredients in recognized therapeutic amounts.

(2) any material, compound, mixture, or preparation containing any of the following narcotic drugs or their salts:

(2-1) Buprenorphine.

Schedule III stimulants

Unless listed in another schedule, a material, compound, mixture or preparation that contains any quantity of the following substances having a stimulant effect on the central nervous system, including the substance's salts, optical, position, or geometric isomers, and salts of the substance's isomers, if the existence of the salts, isomers, and salts of isomers is possible within the specific chemical designation:

(1) Benzphetamine;

(2) Chlorphentermine;

(3) Clortermine; and

(4) Phendimetrazine.

Schedule III anabolic steroids and hormones

Anabolic steroids, including any drug or hormonal substance, chemically and pharmacologically related to testosterone (other than estrogens, progestins, corticosteroids, and dehydroepiandrosterone), and include the following:

(1) androstanediol

(1-1) 3 beta,17 beta-dihydroxy-5 alpha-androstane;

(1-2) 3 alpha,17 beta-dihydroxy-5 alpha-androstane;

(2) androstanedione (5 alpha-androstan-3,17-dione);

(3) androstenediol--

(3-1) 1-androstenediol (3 beta,17 beta-dihydroxy-5 alpha-androst-1-ene);

(3-2) 1-androstenediol (3 alpha,17 beta-dihydroxy-5 alpha-androst-1-ene);

(3-3) 4-androstenediol (3 beta,17 beta-dihydroxy-androst-4-ene);

(3-4) 5-androstenediol (3 beta,17 beta-dihydroxy-androst-5-ene);

(4) androstenedione--

(4-1) 1-androstenedione ([5 alpha]-androst-1-en-3,17-dione);

(4-2) 4-androstenedione (androst-4-en-3,17-dione);

(4-3) 5-androstenedione (androst-5-en-3,17-dione);

(5) bolasterone (7 alpha,17 alpha-dimethyl-17 beta-hydroxyandrost-4-en-3-one);

(6) boldenone (17 beta-hydroxyandrost-1,4,-diene-3-one);

(7) calusterone (7 beta,17 alpha-dimethyl-17 beta-hydroxyandrost-4-en-3-one);

(8) clostebol (4-chloro-17 beta-hydroxyandrost-4-en-3-one);

(9) dehydrochloromethyltestosterone (4-chloro-17 beta-hydroxy-17alpha-methyl-androst-1,4-dien-3-one);

(10) delta-1-dihydrotestosterone (a.k.a. '1-testosterone') (17 beta-hydroxy-5 alpha-androst-1-en-3-one);

(11) 4-dihydrotestosterone (17 beta-hydroxy-androstan-3-one);

(12) drostanolone (17 beta-hydroxy-2 alpha-methyl-5 alpha-androstan-3-one);

(13) ethylestrenol (17 alpha-ethyl-17 beta-hydroxyestr-4-ene);

(14) fluoxymesterone (9-fluoro-17 alpha-methyl-11 beta,17 beta-dihydroxyandrost-4-en-3-one);

(15) formebolone (2-formyl-17 alpha-methyl-11 alpha,17 beta-dihydroxyandrost-1,4-dien-3-one);

(16) furazabol (17 alpha-methyl-17 beta-hydroxyandrostano[2,3-c]-furazan);

(17) 13 beta-ethyl-17 beta-hydroxygon-4-en-3-one;

(18) 4-hydroxytestosterone (4,17 beta-dihydroxy-androst-4-en-3-one);

(19) 4-hydroxy-19-nortestosterone (4,17 beta-dihydroxy-estr-4-en-3-one);

(20) mestanolone (17 alpha-methyl-17 beta-hydroxy-5 alpha-androstan-3-one);

(21) mesterolone (1 alpha-methyl-17 beta-hydroxy-[5 alpha]-androstan-3-one);

(22) methandienone (17 alpha-methyl-17 beta-hydroxyandrost-1,4-dien-3-one);

(23) methandriol (17 alpha-methyl-3 beta,17 beta-dihydroxyandrost-5-ene);

(24) methenolone (1-methyl-17 beta-hydroxy-5 alpha-androst-1-en-3-one);

(25) 17 alpha-methyl-3 beta, 17 beta-dihydroxy-5 alpha-androstane;

(26) 17alpha-methyl-3 alpha,17 beta-dihydroxy-5 alpha-androstane;

(27) 17 alpha-methyl-3 beta,17 beta-dihydroxyandrost-4-ene;

(28) 17 alpha-methyl-4-hydroxynandrolone (17 alpha-methyl-4-hydroxy-17 beta-hydroxyestr-4-en-3-one);

(29) methyldienolone (17 alpha-methyl-17 beta-hydroxyestra-4,9(10)-dien-3-one);

(30) methyltrienolone (17 alpha-methyl-17 beta-hydroxyestra-4,9-11-trien-3-one);

(31) methyltestosterone (17 alpha-methyl-17 beta-hydroxyandrost-4-en-3-one);

(32) mibolerone (7 alpha,17 alpha-dimethyl-17 beta-hydroxyestr-4-en-3-one);

(33) 17 alpha-methyl-delta-1-dihydrotestosterone (17 beta-hydroxy-17 alpha-methyl-5 alpha-androst-1-en-3-one) (a.k.a. '17-alpha-methyl-1-testosterone');

(34) nandrolone (17 beta-hydroxyestr-4-en-3-one);

(35) norandrostenediol--

(35-1) 19-nor-4-androstenediol (3 beta, 17 beta-dihydroxyestr-4-ene);

(35-2) 19-nor-4-androstenediol (3 alpha, 17 beta-dihydroxyestr-4-ene);

(35-3) 19-nor-5-androstenediol (3 beta, 17 beta-dihydroxyestr-5-ene);

(35-4) 19-nor-5-androstenediol (3 alpha, 17 beta-dihydroxyestr-5-ene);

(36) norandrostenedione--

(36-1) 19-nor-4-androstenedione (estr-4-en-3,17-dione);

(36-2) 19-nor-5-androstenedione (estr-5-en-3,17-dione;

(37) norbolethone (13 beta,17alpha-diethyl-17 beta-hydroxygon-4-en-3-one);

(38) norclostebol (4-chloro-17 beta-hydroxyestr-4-en-3-one);

(39) norethandrolone (17 alpha-ethyl-17 beta-hydroxyestr-4-en-3-one);

(40) normethandrolone (17 alpha-methyl-17 beta-hydroxyestr-4-en-3-one);

(41) oxandrolone (17 alpha-methyl-17 beta-hydroxy-2-oxa-[5 alpha]-androstan-3-one);

(42) oxymesterone (17 alpha-methyl-4,17 beta-dihydroxyandrost-4-en-3-one);

(43) oxymetholone (17 alpha-methyl-2-hydroxymethylene-17 beta-hydroxy-[5 alpha]-androstan-3-one);

(44) stanozolol (17 alpha-methyl-17 beta-hydroxy-[5 alpha]-androst-2-eno[3,2-c]-pyrazole);

(45) stenbolone (17 beta-hydroxy-2-methyl-[5 alpha]-androst-1-en-3-one);

(46) testolactone (13-hydroxy-3-oxo-13,17-secoandrosta-1,4-dien-17-oic acid lactone);

(47) testosterone (17 beta-hydroxyandrost-4-en-3-one);

(48) tetrahydrogestrinone (13 beta,17 alpha-diethyl-17 beta-hydroxygon-4,9,11-trien-3-one);

(49) trenbolone (17 beta-hydroxyestr-4,9,11-trien-3-one); and

(50) any salt, ester, or ether of a drug or substance described in this paragraph.

Schedule III hallucinogenic substances

(1) Dronabinol (synthetic) in sesame oil and encapsulated in a soft gelatin capsule in U.S. Food and Drug Administration approved drug product. (Some other names for dronabinol:(6aR-trans)-6a,7,8,10a-tetrahydro-6,6,9-tri-methyl-3-pentyl-6H-dibenzo[b,d]pyran-1-ol, or (-)-delta-9-(trans)-tetrahydrocannabinol).

SCHEDULE IV

Schedule IV consists of:

Schedule IV depressants

Except as provided by the Texas Controlled Substances Act, Health and Safety Code, §481.033, a material, compound, mixture, or preparation that contains any quantity of the following substances having a potential for abuse associated with a depressant effect on the central nervous system:

(1) Alprazolam;

(2) Barbital;

(3) Bromazepam;

(4) Camazepam;

(5) Chloral betaine;

(6) Chloral hydrate;

(7) Chlordiazepoxide;

(8) Clobazam;

(9) Clonazepam;

(10) Clorazepate;

(11) Clotiazepam;

(12) Cloxazolam;

(13) Delorazepam;

(14) Diazepam;

(15) Dichloralphenazone;

(16) Estazolam;

(17) Ethchlorvynol;

(18) Ethinamate;

(19) Ethyl loflazepate;

(20) Fludiazepam;

(21) Flunitrazepam;

(22) Flurazepam;

(23) Halazepam;

(24) Haloxazolam;

(25) Ketazolam;

(26) Loprazolam;

(27) Lorazepam;

(28) Lormetazepam;

(29) Mebutamate;

(30) Medazepam;

(31) Meprobamate;

(32) Methohexital;

(33) Methylphenobarbital (mephobarbital);

(34) Midazolam;

(35) Nimetazepam;

(36) Nitrazepam;

(37) Nordiazepam;

(38) Oxazepam;

(39) Oxazolam;

(40) Paraldehyde;

(41) Petrichloral;

(42) Phenobarbital;

(43) Pinazepam;

(44) Prazepam;

(45) Quazepam;

(46) Temazepam;

(47) Tetrazepam;

(48) Triazolam;

(49) Zaleplon;

(50) Zolpidem; and

(51) Zopiclone, its salts, isomers, and salts of isomers.

Schedule IV stimulants

Unless listed in another schedule, a material, compound, mixture, or preparation that contains any quantity of the following substances having a stimulant effect on the central nervous system, including the substance's salts, optical, position, or geometric isomers, and salts of those isomers if the existence of the salts, isomers, and salts of isomers is possible within the specific chemical designation:

(1) Cathine [(+)-norpseudoephedrine];

(2) Diethylpropion;

(3) Fencamfamin;

(4) Fenfluramine;

(5) Fenproporex;

(6) Mazindol;

(7) Mefenorex;

(8) Modafinil;

(9) Pemoline (including organometallic complexes and their chelates);

(10) Phentermine;

(11) Pipradrol;

(12) SPA [(-)-1-dimethylamino-1,2-diphenylethane]; and

(13) Sibutramine.

Schedule IV narcotics

Unless specifically excepted or unless listed in another schedule, a material, compound, mixture, or preparation containing limited quantities of the following narcotic drugs or their salts:

(1) Not more than 1 milligram of difenoxin and not less than 25 micrograms of atropine sulfate per dosage unit; and

(2) Dextropropoxyphene (Alpha-(+)-4-dimethylamino-1,2-diphenyl-3-methyl-2-propionoxybutane).

Schedule IV other substances

Unless specifically excepted or unless listed in another schedule, a material, compound, substance's salts:

(1) Butorphanol, including its optical isomers; and

(2) Pentazocine, its salts, derivatives, compounds, or mixtures.

SCHEDULE V

Schedule V consists of:

Schedule V narcotics containing non-narcotic active medicinal ingredients

A compound, mixture, or preparation containing limited quantities of any of the following narcotic drugs that also contain one or more non-narcotic active medicinal ingredients in sufficient proportion to confer on the compound, mixture or preparation valuable medicinal qualities other than those possessed by the narcotic drug alone:

(1) Not more than 200 milligrams of codeine, or any of its salts, per 100 milliliters or per 100 grams;

(2) Not more than 100 milligrams of dihydrocodeine, or any of its salts, per 100 milliliters or per 100 grams;

(3) Not more than 100 milligrams of ethylmorphine, or any of its salts, per 100 milliliters or per 100 grams;

(4) Not more than 2.5 milligrams of diphenoxylate and not less than 25 micrograms of atropine sulfate per dosage unit;

(5) Not more than 15 milligrams of opium per 29.5729 milliliters or per 28.35 grams; and

(6) Not more than 0.5 milligram of difenoxin and not less than 25 micrograms of atropine sulfate per dosage unit.

Schedule V stimulants

Unless specifically exempted or excluded or unless listed in another schedule, a compound, mixture, or preparation which contains any quantity of the following substances having a stimulant effect on the central nervous system, including its salts, isomers and salts of isomers:

(1) Pyrovalerone.

Schedule V depressants

Unless specifically exempted or excluded or unless listed in another schedule, any material, compound, mixture, or preparation, which contains any quantity of the following substances having a depressant effect on the central nervous system, including its salts:

(1) Pregabalin [(S)-3-(aminomethyl)-5-methylhexanoic acid].

TRD-200806595
Lisa Hernandez
General Counsel
Department of State Health Services
Filed: December 18, 2008

♦ ♦ ♦

Texas Department of Housing and Community Affairs

2009 Community Services Block Grant State Discretionary Funds Notice of Funding Availability (NOFA)

I. Background and Purpose of Community Services Block Grant State Discretionary Funds Notice of Funding Availability (NOFA).

The Community Services Block Grant (CSBG) funds, funded through the U.S. Department of Health and Human Services, are to be utilized to ameliorate the causes of poverty in communities. States are allowed to utilize the CSBG funds in accordance with §675(C), Uses of Funds, Public Law 105-285. Per the CSBG Act, 42 USC §9907(b)(1)(A) - (H), if a state uses less than 100% of the grant to make grants under subsection (a) of this section, the state shall use the remainder of the grant or allotment CSBG for activities that may include training and technical assistance, coordination of program and services, statewide coordination and communication among eligible entities, analyzing the distribution of funds, asset building programs, supporting innovative programs and services to eliminate poverty, promote self-sufficiency, promote community revitalization, and supporting activities consistent with the purpose of the CSBG Act.

The Texas Legislature designated the Texas Department of Housing and Community Affairs (the Department) to administer this program pursuant to §2306.094, Texas Government Code.

The Department has been notified that the 2009 CSBG award for Texas is $31,311,979, of which $900,000 will fund projects which are awarded funding based on the results of the applications received in response to this NOFA.

II. Notice of Funding Availability.

The Department will accept applications in response to the Community Services Block Grant State Discretionary Funds Notice of Funding Availability. ESGP funds will be made available to eligible applicants to carry out the purpose of the Community Services Block Grant based on this statewide competitive NOFA process.

III. CSBG NOFA Qualifications.

Applicants responding to this NOFA must meet the qualifications of the NOFA. Eligible applicants include Community Services Block Grant eligible entities, private non-profit organizations with an existing status as a §501(c) tax-exempt entity as defined by the Internal Revenue Service, units of local government, and regional councils. Applicant organizations must be headquartered within the State of Texas.

IV. Contract Period.

The contract period will be April 1, 2009 through March 31, 2010.

V. Maximum Amount of Request.

The maximum amount that can be requested is $125,000 per application. No more than one application per organization will be accepted.

VI. Application Deadline and Availability.

The 2009 CSBG Discretionary Funds NOFA will be posted on the Department's website: http://www.tdhca.state.tx.us/cs.htm#CSBG and organizations on the Department's list serve will receive an e-mail notification that the NOFA is available on the Department's web-site as well as current CSBG and Emergency Shelter Grants Program subrecipients.

Deadline for Receipt: Tuesday, January 20, 2009 by 5:00 p.m. CST

Mailing Address: Ms. Amy M. Oehler, Director

Community Affairs Division

Texas Department of Housing and Community Affairs

Post Office Box 13941

Austin, Texas 78711-3941

(All U.S. Postal Service including Express)

Courier Delivery: 221 East 11th Street, 1st Floor

Austin, Texas 78701

(FedEx, UPS, Overnight, etc.)

Hand Delivery: If you are hand delivering the application, contact J. Al Almaguer at (512) 475-3908 (Al.Almaguer@tdhca.state.tx.us) or Rita Gonzales-Garza at (512) 475-3905 (Rita.Garza@tdhca.state.tx.us) when you arrive at the lobby of our building for application acceptance.

Questions. Questions pertaining to the content of the 2009 CSBG Discretionary Funds NOFA may only be directed to Rita Gonzales-Garza at (512) 475-3905 (Rita.Garza@tdhca.state.tx.us) and J. Al Almaguer at (512) 475-3908 (Al.Almaguer@tdhca.state.tx.us).

TRD-200806629
Michael Gerber
Executive Director
Texas Department of Housing and Community Affairs
Filed: December 19, 2008

♦ ♦ ♦

HOME Investment Partnerships Program 2008 Single Family Owner-Occupied Housing Assistance, Tenant-Based Rental Assistance, and Homebuyer Assistance Programs Notice of Funding Availability (NOFA)

(1) Summary.

(a) The Texas Department of Housing and Community Affairs ("the Department") announces the availability of $27,034,118 in funding from the HOME Investment Partnerships Program (HOME) funds for single family housing programs including owner-occupied housing assistance, homebuyer assistance, and tenant-based rental assistance to assist low income Texans.

(b) The availability and use of these funds is subject to the Department's HOME Program Rule at Title 10 Texas Administrative Code (10 TAC) Chapter 53 in effect at the time the application is submitted, the Federal HOME regulations governing the HOME program (24 CFR Part 92), and Chapter 2306, Texas Government Code. Other federal regulations may also apply such as, but not limited to, 24 CFR Parts 50 and 58 for environmental requirements, 24 CFR §85.36 and §84.42 for conflict of interest and 24 CFR Part 5, Subpart A for fair housing. Applicants are encouraged to familiarize themselves with all of the applicable state and federal rules that govern the program.

(2) Allocation of Funds.

(a) These funds are made available through the Department's 2008 annual HOME allocation from the U.S. Department of Housing and Urban Development (HUD) and may also include uncommitted, deobligated and program income HOME funds. The funds are set-aside for eligible applicants proposing to provide assistance to eligible homeowners in need of rehabilitation or reconstruction of their primary residence, homebuyers for the acquisition including downpayment and closing costs toward the purchase of a home, and households seeking tenant-based rental assistance. Households assisted with HOME funds must be at or below 80% of the Area Median Family Income (AMFI), as defined by HUD.

(b) In accordance with Texas Government Code §2306.111, housing funds awarded in the HOME Program must be allocated utilizing the Regional Allocation Formula (RAF) developed by the Department. Funds are allocated for each Program Activity to each Uniform State Service Region and rural and urban area types.

(c) In accordance with 10 TAC §53.48(a) this NOFA will be an open application cycle. Funds will be available on a first-come first-served basis for HOME Program Activities specified in this NOFA. Applications submitted prior to 5:00 p.m. October 15, 2008, were subject to the Regional Allocation Formula.

(d) Any funds not requested in an application received by 5:00 p.m. October 15, 2008 have collapsed and made available statewide (excluding PJs) in any Uniform State Service Region. Funds will remain set-aside within each HOME Program Activity. Applications will be accepted by the Department on an on-going basis until the earlier of the request of all funds or 5:00 p.m. Thursday, January 15, 2009, regardless of method of delivery.

(e) On Friday, January 16, 2009 any funds not requested under the statewide, Program Activity specific open cycle, will be made available in any Uniform State Service Region (excluding PJs) for any eligible HOME Program Activity specified in this NOFA. Applications will be accepted by the Department on an on-going basis until the earlier of the award of all funds or 5:00 p.m. Thursday, April 30, 2009, regardless of method of delivery.

(3) Limitation on Funds.

(a) Funds will not be eligible for use in a Participating Jurisdiction (PJ). Any HOME funds available for serving households in a PJ will only be made available under a separate NOFA for Persons with Disabilities as described in the 2008 State of Texas Consolidated Plan One-Year Action Plan.

(b) The Department awards HOME funds to eligible entities and the maximum award amount may not exceed $390,000, including administrative costs, for Owner-Occupied Housing Assistance, $312,000, including administrative costs, for Homebuyer Assistance, and $336,000, including administrative costs, for Tenant-Based Rental Assistance. Up to $520,000, including administrative costs may be awarded to Homebuyer Assistance applicants whose Service Area includes multiple counties within a Uniform State Service Region. An Applicant may submit an Application to apply for additional funding as long as the Applicant is 100% committed on their current contract for the same activity funded under this NOFA.

(c) With the exception of Tenant-Based Rental Assistance, the minimum HOME assistance amount per unit may not be less than $1,000 per HOME assisted unit. The per-unit subsidy may not exceed the per-unit dollar limits established by the U.S. Department of Housing and Urban Development (HUD) under §221(d)(3) of the National Housing Act, which are applicable to the area in which the housing is located, and as published by HUD. The purchase price of the housing unit, plus the value of the rehabilitation or reconstruction if applicable, must not exceed 95% of the area's median purchase price as specified in the HUD §203(b) Limits.

(d) Each applicant that is awarded HOME funds may also be eligible to receive funding for administrative costs. The award amount for administrative costs shall not exceed the amount allowed per 10 TAC §53.85. Administrator must use funds for Administrative costs in accordance with 24 CFR §92.207. For the OCC and HBA Program Activities, funds for Administrative Costs cannot exceed 4% of the total project costs for the entire contract term. For the TBRA Program Activity, funds for Administrative Costs cannot exceed 4% of the total project funds per year of the Contract term.

(e) In accordance with §53.72, before the effective date of the HOME Contract, the Contract Administrator may incur and be reimbursed for travel costs, as provided for with Administrative funds, related to mandatory implementation training required by the Department as a condition of receiving a HOME award and Contract.

(4) Eligible and Prohibited Activities.

(a) Eligible activities include those permissible under the federal HOME Final Rule at 24 CFR §92.205 and the Department's HOME Program Rule at 10 TAC §53.31 for OCC, §53.32 for HBA, and §53.33 for TBRA.

(b) Prohibited activities include those at 24 CFR §92.214 and 10 TAC §53.37.

(5) Eligible and Ineligible Applicants.

(a) Eligible Applicants are Units of General Local Government, Nonprofit Organizations, Public Housing Authorities (PHAs), and for-profit entities.

(b) Applicants may be ineligible for funding if they meet any of the criteria listed in 10 TAC §53.42 of the Department's HOME Program Rule. Applicants are encouraged to familiarize themselves with the Department's certification and debarment policies prior to application submission.

(6) Matching Funds.

Applicants will be required to submit documentation on all financial resources to be used in the development that may be considered match to the Department's federal HOME requirements. Applicants must provide firm commitments as defined in accordance with the Federal HOME rules at 24 CFR §92.218 and the Department's Match Guide and will be provided with the appropriate forms and instructions on how to report eligible match.

(7) Affordability Requirements.

(a) Applicants should be aware that there are minimum affordability periods necessary for HOME-assisted housing. The unit assisted must be the primary residence of the homebuyer. Single family housing units assisted with HOME funds must comply with the required affordability requirements as defined at 24 CFR §92.254. Awarded entities will provide the HOME assistance to the homebuyer in the form of a loan. Each loan will be in the form of a zero percent (0%) interest, deferred forgivable loan with a term based on the total amount of assistance provided and in accordance with 24 CFR §92.254. All loans to assisted homebuyers must be evidenced by loan documents provided by the Department. Each loan to an assisted homebuyer and homeowners must be payable to Department. Each loan for reconstruction or rehabilitation shall be evidenced by a construction loan agreement, note, deed of trust, mechanic's lien note, and mechanic's lien contract secured by the property and must be fully executed before any construction activities commence.

(b) If at any time prior to the full loan period there occurs a resale of the property, a refinance of any superior lien, a repayment of any superior lien, or if the unit ceases to be the assisted Household's principal residence, the remaining loan balance shall become due and payable.

(c) Forgiveness of the loan balance is calculated based on a pro-rata annual share of the loan term. The anniversary date of the loan shall constitute completion of the year. Any partial year shall not be waived. The amount due will be based on the pro-rata share number of years of the remaining loan term.

(d) In the event the home is sold (voluntary or involuntary); the assisted Household will pay the loan balance from the shared net proceeds of the sale. The shared net proceeds are the sales price minus superior loan repayment (other than HOME funds) and any closing costs. A copy of the HUD closing statement must be provided.

(8) Site and Construction Restrictions.

(a) Pursuant to 24 CFR §92.251, housing that is constructed or rehabilitated with HOME funds must meet all applicable local codes, rehabilitation standards, ordinances, and zoning ordinances at the time of project completion. In the absence of a local code for new construction or rehabilitation, HOME-assisted new construction or rehabilitation must meet, as applicable, the International Residential Code, Texas Minimum Construction Standards (TMCS) and be in compliance with the basic access standards in new construction, established by §2306.514, Texas Government Code. In addition, housing that is rehabilitated with funds awarded under this NOFA must meet all applicable energy efficiency standards established by §2306.187 of the Texas Government Code, and energy standards as verified by RESCHECK, in accordance with the Final Rule.

(b) At the completion of the assistance, all properties must meet the International Residential Code and local building codes. If a home is reconstructed, the applicant must also ensure compliance with the universal design features in new construction, established by §2306.514 of the Texas Government Code, required for any applicant utilizing federal or state funds administered by TDHCA in the construction of single family homes.

(c) All other HOME-assisted housing (e.g., acquisition) must meet all applicable State and local housing quality standards and code requirements and if there are no such standards or code requirements, the housing must meet the housing quality standards in 24 CFR §982.401. When HOME funds are used for a rehabilitation development the entire unit must be brought up to the applicable property standards, pursuant to 24 CFR §92.251(a)(1).

(d) Rental units secured though HOME assistance must be inspected prior to occupancy and must comply with Housing Quality Standards (HQS) established by HUD in 24 CFR Part 92.

(9) Owner-Occupied Housing Assistance (OCC).

(a) A total of $20,123,882 in funding released under this NOFA may be used to administer an Owner-Occupied Housing Assistance Program to provide eligible households with loans for the rehabilitation or reconstruction of existing owner-occupied housing and earning 80% or less of the Area Median Family Income (AMFI) as defined by HUD. As defined in 10 TAC §53.31(d)(1), the home must be the principal residence of the homeowner.

(b) In accordance with 10 TAC §53.47(a)(1), the maximum award amount for OCC shall not exceed $390,000, including administrative costs, per Application. In accordance with §53.85 up to 4% of the total project costs may be requested for administrative costs.

(c) Owner-Occupied Housing Assistance to a household is provided in the form of a loan and in accordance with 10 TAC §53.31(g), the maximum amount of assistance is the total of construction costs and soft costs provided to an eligible household. The total construction costs are limited to:

(i) Rehabilitation that is Reconstruction: The lesser of $73.00 per square foot or $80,000, if the Reconstruction includes actual costs for an aerobic septic system and/or demolition. If the Reconstruction includes costs for an aerobic septic system and/or demolition, the total construction costs cannot exceed $73.00 per square foot exclusive of the aerobic septic system and demolition costs; and

(ii) Rehabilitation that is not Reconstruction: $30,000.

(d) In accordance with 10 TAC §53.73(a)(1), the contract term for OCC Program Activity shall not exceed twenty-four (24) months and performance under the contract will be evaluated according to the following benchmarks:

(i) Six (6) months, exempt administrative and broad review environmental clearance must be complete, and if not tiering, the first Household to be assisted must be environmentally cleared;

(ii) Eight (8) months, Authority to Use Grant Funds must be fully executed and all Households to be assisted must be environmentally cleared;

(iii) Twelve (12) months, 100% of funds must be committed to Households to be assisted;

(iv) Eighteen (18) months, 100% of Household's Loans must be closed, if applicable;

(v) Twenty-two (22) months, 100% of construction must be complete for all Households to be assisted; and

(vi) Twenty-four (24) months, 100% funds drawn and 100% of match requirement supplied.

(10) A minimum threshold score of 25 is required in order to be considered for funding. The following threshold criteria listed in the subsection are mandatory requirements at the time of application submission unless specifically indicated otherwise and will be included in the written agreement, if awarded funds:

(a) Affordable Housing Needs Score: Points range from zero to seven as published by the Department. Maximum 7 points.

(b) Match: Per 24 CFR §92.218, the Department will recognize eligible forms of matching contributions made from nonfederal resources. The following table will be used to determine match requirement and associated points:

OCC Housing Program Required Community Match Contributions

City Population	County Population	Required Match Percent of Project Funds Requested	Points	Additional Points
< 3000	< 20,000	5%	10	10 points for each additional percent of match provided
3,000 – 5,000	20,000 – 75,000	10%	10	7 points for each additional percent of match provided
> 5,000	> 75,000	12.5%	10	5 points for each additional percent of match provided

(c) Income Targeting: In order to meet its annual goal of assisting very low to extremely low income families, the Department incentivizes application points for income targeting of households assisted. The following table will be used to determine income targeting requirements and associated points. Maximum 20 points.

(d) In accordance with the Housing Assistance Rider of the Department's Legislative Appropriation, in order to meet the 30% and below AMFI goal, Applicants, if awarded, may use the state average median family income to determine income eligibility for eligible households living in those counties where the area median family income is lower than the state average median family income.

Point Incentives for Income Targeting

Income Target	Points
0% to 29.99 % of units at 60% AMFI	1
30% to 59.99 % of units at 60% AMFI	3
60% to 100 % of units at 60% AMFI	5
0% to 29.99% of units at 30% AMFI	+6
30% to 59.99% of units at 30% AMFI	+11
60% to 100% of units at 30% AMFI	+15

(e) Cash Reserve: Each awarded applicant will be required to expend funds according to program guidelines and request funds from the Department for eligible expenses. Every Applicant must evidence the ability to administer the program and commit adequate cash reserves of at least $120,000 to facilitate administration of the program during the Department's disbursement process. Cash reserves are not permanently invested in the project but are used for short term deficits that are reimbursed by program funds. Evidence of this commitment and the amount of the commitment must be included in the Applicant's resolution and budget.

(f) Resolution: All applications submitted must include an original resolution from the Applicant's direct governing body, authorizing the submission of the Application, commitment and amount of cash reserves for use during the contract period, source of funds for match obligation and match dollar amount, naming of a person and the person's title authorized to represent the organization and signature authority to execute a contract. If an Applicant that is a nonprofit organization is requesting a waiver of the grant application fee, they must do so in the resolution, and must state that the nonprofit organization offers expanded services such as child care, nutrition programs, job training assistance, health services, or human services. The resolution must be signed and dated within the six (6) months preceding the application submission date.

(g) Description of Demand: All applicants must submit a narrative that describes in detail the demand evidenced for the proposed number of units to be assisted in the proposed service area. Source data, calculations, assumptions, and pictures of housing stock must be included.

(11) Homebuyer Assistance (HBA).

(a) Approximately $3,455,118 of HOME Funds released under this NOFA shall be used to administer a Homebuyer Assistance Program, providing downpayment and closing cost assistance (including soft costs) to eligible first time homebuyers for the acquisition of affordable single family housing.

(b) In accordance with 10 TAC §53.47(a)(1), the maximum award amount for HBA shall not exceed $312,000, including administrative costs, per Application; however, up to $520,000, including administrative costs, may be awarded to HBA Applicants whose Service Area includes multiple counties within a Uniform State Service Region. In accordance with 10 TAC §53.85(a)(1), for the HBA Program Activities, funds for Administrative costs cannot exceed 4% of the total project costs for the entire Contract term.

(c) In accordance with §53.32(e), the maximum amount of assistance is the total of the downpayment and closing cost assistance and soft costs provided to an eligible household. The total amount of downpayment and closing cost assistance is limited to $20,000.

(d) In accordance with §53.32(m), the following first lien purchase loan requirements are imposed for households receiving Homebuyer Assistance:

(i) No adjustable rate mortgage loans (ARMs) or interest rate buy-down loans are allowed;

(ii) No mortgages with a loan to value equal to or greater than 100% are allowed;

(iii) No Subprime Mortgage Loans are allowed;

(iv) An origination fee and any other fees associated with the mortgage loan may not exceed 2% of the loan amount; and

(v) The debt to income ratio (back-end ratio) may not exceed 45%.

(e) HBA assistance will be in the form of a 0% interest 5 or 10 year deferred forgivable loan contingent upon the total amount of assistance, creating a 2nd or 3rd lien with a term based on the federal affordability requirements as defined in 24 CFR §92.254.

(f) In accordance with 10 TAC §53.73(a)(2), the contract term for the HBA Program Activity shall not exceed twenty-four (24) months and performance under the contract will be evaluated according to the following benchmarks:

(i) Six (6) months, exempt administrative and environmental clearance must be complete for at least one Household to be assisted;

(ii) Twelve (12) months, environmental clearance must be complete for at least 50% of the Households to be assisted, 50% of funds must be committed, 25% of funds drawn, and 25% of match supplied;

(iii) Eighteen (18) months, environmental clearance must be complete for at least 75% of the Households to be assisted, 75% of funds must be committed, 50% of funds drawn, and 50% of match requirement supplied; and

(iv) Twenty-four (24) months, 100% of funds must be committed, 100% of funds drawn, and 100% of matched supplied.

(g) A minimum threshold score of 15 is required in order to be considered for funding. The following threshold criteria listed in the subsection are mandatory requirements at the time of application submission unless specifically indicated otherwise and will be included in the written agreement, if awarded funds:

(i) Affordable Housing Needs Score: Points range from zero to seven, as published by the Department. Maximum 7 points.

(ii) Match: the following table will be used to determine match requirement and associated points:

HBA Program Required Community Match Contributions

Required Match Percent of Project Funds Requested	Points	Additional Points
5%	10	10 points for each additional percent of match provided

(iii) Income Targeting: In order to meet its annual goal of assisting very low to extremely low income families, the Department incentivizes application points for income targeting of households assisted The following table will be used to determine income targeting requirements and associated points. Maximum 20 points.

Point Incentives for Income Targeting

Income Target	Points
0% to 29.99% of units at 60% AMFI	3
30% to 59.99% of units at 60% AMFI	7
60% to 100% of units at 60% AMFI	10

(iv) Cash Reserve: Each awarded applicant will be required to expend funds according to program guidelines and request funds from the Department for eligible expenses. Every Applicant must evidence the ability to administer the program and commit adequate cash reserves of at least $60,000 to facilitate administration of the program during the Department's disbursement process. Cash reserves are not permanently invested in the project but are used for short term deficits that are paid by program funds. Evidence of this commitment and the amount must be included in the Applicant's resolution and budget.

(v) Resolution: All applications submitted must include an original resolution from the Applicant's direct governing body, authorizing the submission of the Application, commitment and the amount of cash reserves for use during the contract period, source of funds for match obligation and match dollar amount, naming of a person and the person's title authorized to represent the organization and signature authority to execute a contract. If an Applicant that is a nonprofit organization is requesting a waiver of the grant application fee, they must do so in the resolution, and must state that the nonprofit organization offers expanded services such as child care, nutrition programs, job training assistance, health services, or human services. The resolution must be signed and dated within the six (6) months preceding the application deadline date.

(vi) Description of Demand: It will be a threshold requirement to submit a narrative that describes in detail the demand evidenced for the proposed number of units to be assisted in the proposed service area. Source data, calculations and assumptions must be included.

(vii) Homebuyer Counseling: It will be a threshold requirement for each applicant to submit the level of homebuyer counseling that will be provided. A minimum of eight (8) hours of homebuyer counseling must be provided. Evidence must include documentation describing the level of homebuyer counseling proposed, including post purchase counseling. Applicant must state who will provide the homebuyer counseling. A copy of the curriculum and a copy of the proposed written agreement for service provider (if the applicant is not providing the service) must also be provided.

(12) Tenant-Based Rental Assistance (TBRA).

(a) Approximately $3,455,118 of HOME funds released under this NOFA shall be used to administer a Tenant-Based Rental Assistance Program to provide eligible households rental subsidies, including security and utility deposits to tenants earning 80% or less of the Area Median Family Income (AMFI) as defined by HUD. In accordance with 24 CFR §92.216, not less than 90% of the households assisted with respect to TBRA or rental units, must have incomes at or below 60% of the AMFI, as defined by HUD.

(b) In accordance with 10 TAC §53.47(a)(1) the maximum award amount for TBRA shall not exceed $336,000, including administrative costs, per Application. In accordance with §53.85(a)(1), for the TBRA program activity, funds for administrative costs cannot exceed 4% of the total project funds per year of the Contract term. In accordance with 10 TAC §53.73(a)(3) the contract term for TBRA shall not exceed thirty-six (36) months, however, individual household assistance is limited to twenty-four (24) months.

(c) Through the TBRA program, rental subsidy and security and utility deposit assistance is provided to tenants as a grant, in accordance with written tenant selection policies, for a period not to exceed twenty-four (24) months, which shall include among its objectives the securing of a permanent source of affordable housing on or before the expiration of the rental subsidy. Security deposits and utility deposits may be provided in conjunction with rental assistance. A security deposit cannot exceed two (2) months rent for the unit.

(d) As per 10 TAC §53.33, the Household must comply with the following initial eligibility requirements: participate in an approved self-sufficiency program; maintain principal residency in the rental unit for which the subsidy is being provided; be an income eligible household; reside in a rental unit that is located within the Administrator's Service Area; and meet all other eligibility requirements.

(e) As defined in 10 TAC §53.33(d) the rental standard must not exceed HUD's "Fair Market Rent for the Housing Choice Voucher Program." Rental units must be inspected prior to occupancy and must comply with Housing Quality Standards established by HUD.

(f) In accordance with 10 TAC §53.73(a)(3), the contract term for the TBRA Program shall not exceed thirty-six (36) months and performance under the contract will be evaluated according to the following benchmarks:

(i) Six (6) months, exempt administrative environmental clearance must be complete and application intake complete for 30% for Households to be assisted;

(ii) Nine (9) months, application intake complete for 75% for Households to be assisted;

(iii) Twelve (12) months, 100% of funds must be committed to Households to be assisted and 25% of funds drawn;

(iv) Eighteen (18) months, 100% of funds already committed and 35% of funds drawn;

(v) Twenty-four (24) months, 100% of funds already committed and 50% of funds drawn; and

(vi) Thirty-six (36) months, 100% of funds already committed and 100% of funds drawn.

(g) A minimum threshold score of 15 is required in order to be considered for funding. The following threshold criteria listed in the subsection are mandatory requirements at the time of application submission unless specifically indicated otherwise and will be included in the written agreement, if awarded funds:

(i) Affordable Housing Needs Score: Points range from zero to seven, as published by the Department. Maximum 7 points.

(ii) Income Targeting - Maximum 20 points: In order to meet its annual goal of assisting very low to extremely low income families, the Department incentivizes application points for income targeting of households assisted. The following table will be used to determine income targeting requirements and associated points.

Point Incentives for Income Targeting

Income Target	Points
0% to 29.99 % of units at 60% AMFI	1
30% to 59.99 % of units at 60% AMFI	3
60% to 100 % of units at 60% AMFI	5
0% to 29.99% of units at 30% AMFI	+6
30% to 59.99% of units at 30% AMFI	+11
60% to 100% of units at 30% AMFI	+15

(iii) Cash Reserve: Each awarded applicant will be required to expend funds according to program guidelines and request funds from the Department for eligible expenses. Every Applicant must evidence the ability to administer the program and commit adequate cash reserves of at least one (1) month of rent for the number of households proposed to serve as stated in the application to facilitate administration of the program during the Department's disbursement process. Cash reserves are not permanently invested in the project but are used for short term deficits that are reimbursed by program funds. Evidence of this commitment and the amount must be included in the Applicant's resolution and budget.

(iv) Resolution: All applications submitted must include an original resolution from the Applicant's direct governing body, authorizing the submission of the Application, commitment and amount of cash reserves for use during the contract period, source of funds for match obligation and match dollar amount, naming of a person and the person's title authorized to represent the organization and signature authority to execute a contract. If an Applicant that is a nonprofit organization is requesting a waiver of the grant application fee, they must do so in the resolution, and must state that the nonprofit organization offers expanded services such as child care, nutrition programs, job training assistance, health services, or human services. The resolution must be signed and dated within the six (6) months preceding the application deadline date.

(v) Description of Demand: It will be a threshold requirement to submit a narrative that describes in detail the demand evidenced for the proposed number of units to be assisted in the proposed service area. Source data, calculations and assumptions must be included.

(vi) TBRA Self Sufficiency Program: It will be a threshold requirement for each Applicant to submit a proposed detailed Self Sufficiency Plan and must describe the process for the transition of households to permanent housing by the end of the 24-month rental assistance contract term.

(1) The documentation must describe the necessary components for the overall plan proposed for transition of potential tenants. This plan, like a case management plan, should detail the need of the tenant, how these needs will be addressed including any agreements with service providers who shall assist the tenant at meeting these needs, and a proposed timeframe for completing those activities. The plan must include:

(a) A sample household budget which will utilize existing sources of income such as employment, disability payments and other types of support that details how the assisted household will afford to be self-sufficient by the end of the 24-month rental assistance.

(b) If additional income is required to attain self-sufficiency, a plan for attaining the required education or training, or a job search plan must be included.

(c) Specific housing goals that will be completed on or before the end of the 24-month assistance period include: finding permanently subsidized housing, affordable market housing or other permanent housing solutions. The plan should include the required steps such as completing an application, approximate waiting time to get into the type of housing desired and the cost of the housing to the tenant.

(13) Review Process.

(a) Pursuant to 10 TAC §53.48(a), each application will be handled on a first-come, first-served basis as further described in this section. Each application will be assigned a "received date" based on the date and time it is physically received by the Division. Then each application will be reviewed on its own merits as applicable. Applications will continue to be prioritized for funding based on their "received date". Applications will be reviewed for applicant and activity eligibility, and threshold criteria as described in this NOFA.

(i) The Department will ensure review of materials required under the NOFA and Application Submission Procedures Manual (ASPM) and will issue a notice of any Administrative Deficiencies within forty-five (45) days of the received date. Applications with Administrative Deficiencies not cured within five (5) business days, will be terminated and must reapply for consideration of funds. Applications that have completed this Phase will be reviewed for recommendation to the Board by the Committee.

(ii) Because Applications are processed in the order they are received by the Department, it is possible that the Department will expend all available HOME funds before an Application has been completely reviewed. If on the date an Application is received by the Department, no funds are available under this NOFA, the Applicant will be notified that no funds exist under the NOFA and the Application will not be processed.

(b) Pursuant to 10 TAC §53.42 if a submitted Application has an entire Volume of the application missing; has excessive omissions of docu-

mentation from the Threshold Criteria or Uniform Application documentation; or is so unclear, disjointed or incomplete that a thorough review cannot reasonably be performed by the Department, as determined by the Department, will be terminated without being processed as an Administrative Deficiency.

(c) The Department may decline to consider any Application if the proposed activities do not, in the Department's sole determination, represent a prudent use of the Department's funds. The Department is not obligated to proceed with any action pertaining to any Applications that are received, and may decide it is in the Department's best interest to refrain from pursuing any selection process. The Department reserves the right to negotiate individual elements of any Application

(d) All Applicants will be processed through the Department's Application Evaluation System, and will include a previous award and past performance evaluation. Poor past performance may disqualify an Applicant for a funding recommendation or the recommendation may include conditions.

(e) Funding recommendations of eligible Applicants will be presented to the Department's Governing Board of Directors based on eligibility and limited by the total amount of funds available under this NOFA and the maximum award amount.

(f) In accordance with §2306.082, Texas Government Code and 10 TAC §53.6, it is the Department's policy to encourage the use of appropriate alternative dispute resolution procedures ("ADR") under the Governmental Dispute Resolution Act, Chapter 2009, Texas Government Code, to assist in resolving disputes under the Department's jurisdiction. As described in Chapter 154, Civil Practices and Remedies Code, ADR procedures include mediation. Except as prohibited by the Department's ex parte communications policy, the Department encourages informal communications between Department staff and Applicants, and other interested persons, to exchange information and informally resolve disputes. The Department also has administrative appeals processes to fairly and expeditiously resolve disputes. If at anytime an Applicant or other person would like to engage the Department in an ADR procedure, the person may send a proposal to the Department's Dispute Resolution Coordinator. For additional information on the Department's ADR Policy, see the Department's General Administrative Rule on ADR at 10 TAC §1.17

(g) An Applicant may appeal decisions made by staff in accordance with 10 TAC §1.7.

(14) Application Submission.

(a) All applications submitted under this NOFA must be received on or before 5:00 p.m. on Thursday, April 30, 2009, regardless of method of delivery.

(b) The Department will accept applications from 8:00 a.m. to 5:00 p.m. each business day, excluding federal and state holidays from the date this NOFA is published on the Department's web site until the deadline. Question regarding this NOFA should be addressed to:

HOME Division

221 E. 11th Street

Austin, Texas 78701

Telephone: (512) 463-8921

E-mail: HOME@tdhca.state.tx.us

(c) All applications must be submitted, and provide all documentation, as described in this NOFA and associated application materials.

(d) Applicants must submit one complete printed copy of all Application materials and one complete scanned copy on a disc of the Application materials as detailed in the Application Submission Procedures Manual (ASPM). All scanned copies must be scanned in accordance with the guidance provided in the ASPM.

(e) All Application materials including manuals, NOFA, program guidelines, and all applicable HOME rules, will be available on the Department's website at www.tdhca.state.tx.us. Applications will be required to adhere to the HOME Rule and threshold requirements in effect at the time of the Application submission. Applications must be on forms provided by the Department, and cannot be altered or modified and must be in final form before submitting them to the Department.

(f) Applicants are required to remit a non-refundable Application fee payable to the Texas Department of Housing and Community Affairs in the amount of $30 per Application. Payment must be in the form of a check, cashier's check or money order. Do not send cash. Per §2306.147(b), Texas Government Code requires the Department to waive Application fees for nonprofit organizations that offer expanded services such as child care, nutrition programs, job training assistance, health services, or human services. These organizations must include proof of their exempt status and a description of their supportive services in lieu of the Application fee. The Application fee is not an allowable or reimbursable cost under the HOME Program.

(g) This NOFA does not include text of the various applicable regulatory provisions that may be important to the HOME Program. For proper completion of the application, the Department strongly encourages potential applicants to review the State and Federal regulations, and contact the HOME Division for guidance and assistance.

(h) Application Workshop: the Department conducted application workshops in locations throughout the State which provided an overview of the HOME Program Activities eligible under this NOFA and also provided Application preparation and submission requirements, evaluation criteria, and state and federal program information.

(i) Audit Requirements: An applicant is not eligible to apply for funds or any other assistance from the Department unless a past audit or Audit Certification Form has been submitted to the Department in a satisfactory format on or before the application deadline for funds or other assistance per 10 TAC §1.3(b) relating to Delinquent Audits and Related Issues. This is a threshold requirement outlined in the application, therefore applications that have outstanding past audits will be disqualified. Staff will not recommend applications for funding to the Department's Governing Board unless all unresolved audit findings, questions or disallowed costs are resolved per 10 TAC §1.3(c) relating to Delinquent Audits and Related Issues.

(j) Applications must be sent via overnight delivery to:

HOME Division

Texas Department of Housing and Community Affairs

221 East 11th Street

Austin, Texas 78701-2410

or via the U.S. Postal Service to:

HOME Division

Texas Department of Housing and Community Affairs

Post Office Box 13941

Austin, Texas 78711-3941

NOTE: This NOFA does not include the text of the various applicable regulatory provisions that may be important to the particular HOME Program. For proper completion of the application, the Department

strongly encourages potential applicants to review all applicable State and Federal regulations.

TRD-200806611
Michael Gerber
Executive Director
Texas Department of Housing and Community Affairs
Filed: December 19, 2008

♦ ♦ ♦

HOME Investment Partnerships Program Community Housing Development Organization (CHDO) Rental Housing Development Program Notice of Funding Availability (NOFA)

1) Summary

The Texas Department of Housing and Community Affairs ("the Department") announces the availability of approximately $6,337,106 in funding from the HOME Investment Partnerships Program for Community Housing Development Organizations (CHDO) to develop affordable rental housing for low-income Texans. The availability and use of these funds is subject to the Department's HOME Program Rule at Title 10 Texas Administrative Code (10 TAC) Chapter 53 in effect at the time the application is submitted, the Federal HOME regulations governing the HOME program (24 CFR Part 92), and Chapter 2306, Texas Government Code. Other federal regulations may also apply such as, but not limited to, 24 CFR Parts 50 and 58 for environmental requirements, Davis-Bacon Act for labor standards, 24 CFR §85.36 and §84.42 for conflict of interest and 24 CFR Part 5, Subpart A for fair housing. Applicants are encouraged to familiarize themselves with all of the applicable state and federal rules that govern the program.

2) Allocation of HOME Funds

a) These funds are made available through the Department's allocation of HOME funds from the U.S. Department of Housing and Urban Development (HUD). The funds are set-aside for eligible CHDO and rental housing development proposals which involve new construction, rehabilitation, acquisition and rehabilitation of affordable housing development activities. All funds released under this NOFA are to be used for the creation of affordable rental housing for low-income Texans earning 80% or less of the Area Median Family Income (AMFI).

b) In accordance with 10 TAC §53.48, this NOFA will be conducted as an open application cycle and funding will be available on a first-come, first-served basis. Applications submitted prior to 5:00 p.m. on August 25, 2008 were subject to the Regional Allocation Formula. Any funds not requested in an application received by 5:00 p.m. August 25, 2008, have collapsed into an open application cycle with funding available statewide and not subject to the RAF. Applicants are encouraged to review the application process cited above and described herein. Applications that do not meet minimum threshold and financial feasibility will not be considered for funding. Based on the availability of funds, applications for the statewide open application cycle will be accepted until 5:00 p.m. April 30, 2009.

c) The Department awards HOME funds, typically as a loan, to eligible recipients for the provision of housing for low, very low and extremely low-income individuals and families, pursuant to 10 TAC §53.41. Award amounts are limited to no more than $4,000,000 per development. The minimum HOME award may not be less than $1,000 per HOME assisted unit. The maximum award may not exceed 90% of the Total Development Costs ("TDC") unless a resolution of support and commitment for a financial contribution to the development is made by the local unit of government in which the proposed development resides or the proposed development is located in an area where the HUD Fair Market Rents are less than the Calculated HOME Rents (the Calculated HOME Rents in this section refers to the calculated rent for a household earning 65% of the area median income for High HOME or 50% of the area median income for Low HOME before considering the HUD determined Fair Market Rent. The final High and Low HOME Rents for underwriting, operations and compliance is always limited to the lesser of this calculated rent and the HUD determined Fair Market Rent) but will be limited follows:

Maximum HOME Award Based on Total Development Costs

Rent	Resolution from Local Government	Max award as Percentage of TDC	Percentage of TDC from other sources
FMR greater than High Home	No	90%	10%
FMR greater than High Home	Yes	92%	8%
FMR less than or equal to High Home	No	93%	7%
FMR less than or equal to High Home	Yes	95%	5%
FMR less than or equal to Low Home	No	96%	4%
FMR less than or equal to Low Home	Yes	98%	2%

d) The remaining percentage of total development cost must be in the form of permanent loans with a maturity of at least twenty (20) years, in-kind contributions or grants from third-party private or public entities. Developments with USDA or other government-sponsored loans that will remain as permanent financing may be used to satisfy this requirement from a public or private entity. Loans or grants from the Department will not satisfy this requirement. The per-unit subsidy may not exceed the per-unit dollar limits established by the United States Department of Housing and Urban Development (HUD) under §221(d)(3) of the National Housing Act, which are applicable to the area in which the development is located, and as published by HUD. For rental housing developments, the Department's underwriting guidelines in 10 TAC §1.32 will be used which set as a feasibility criterion a 1.15 debt coverage ratio minimum. Where the anticipated debt coverage ratio in the year after completion exceeds 1.35 before considering the proposed HOME funds, a repayable loan, in whole or part will be recommended.

e) Each CHDO that is awarded HOME funds may also be eligible to receive a grant for CHDO Operating Expenses. Applicants will be required to submit organizational operating budgets, audits and other financial and non-financial materials detailed in the HOME application. The award amount for CHDO Operating Expenses shall not exceed $50,000. Awards for operating expenses will be drawn over a two-year period of time. The Department reserves the right to limit an Applicant to receive not more than one award of CHDO Operating Expenses during the same fiscal year and to further limit the award of CHDO Operating Expenses.

f) Developments involving rehabilitation must establish that the rehabilitation will substantially improve the condition of the housing and will involve at least $15,000 per unit in direct hard costs, unless the property is also being financed by the United States Department of Agriculture's Rural Development program. When HOME funds are used for a rehabilitation development the entire unit must be brought up to the applicable property standards, pursuant to 24 CFR §92.251(a)(1).

g) When Department funds will have a first lien position and funds are used for new construction and/or rehabilitation, assurance of completion of the development in the form of payment and performance bonds in the full amount of the construction contract will be required. Such assurance of completion will run to the Department as obligee and must be documented prior to closing.

3) Eligible and Prohibited Activities

a) Eligible activities will include those permissible under the federal HOME Rule at 24 CFR §92.205, the State HOME Rules at 10 TAC §53.34 and §53.50, which involve only the acquisition, rehabilitation or construction of affordable developments.

b) Prohibited activities include those under federal HOME rules at 24 CFR §92.214 and 10 TAC §53.37.

c) Development funds will not be eligible for use in a Participating Jurisdiction (PJ). Any HOME funds available for serving households in a PJ will only be made available under a separate NOFA for Persons with Disabilities as described in the 2009 State of Texas Consolidated Plan One-Year Action Plan.

d) Refinancing of federally financed properties or use of HOME funds for properties constructed within five (5) years of the submission of an Application for assistance will not be permissible.

4) Eligible and Ineligible Applicants

a) The Department provides HOME CHDO funding to qualified nonprofit organizations eligible for CHDO certification. CHDO Certification will be awarded in accordance with the rules and procedures as set forth in the HOME rules at 10 TAC §53.50, Community Housing Development Organization (CHDO) Certification. A separate application process is required for CHDO Certification. Review and approval of the CHDO Certification occurs during the threshold review process, however Applicants will not receive a formal certification until the award of the HOME funds has been approved by the Department's Board. The CHDO Application package will be available with all other application materials on the Department's website. A new Application for CHDO certification must be submitted to the Department with each new Application for HOME Development funds under the CHDO set aside.

b) CHDO Applicants must be the Sponsor, Owner or Developer of the proposed Development. Applicants who apply through a Limited Partnership will be required to provide evidence, at the time of CHDO certification and commitment, that the CHDO Applicant is the Managing General Partner of the partnership and has effective control (decision making authority) over the development and management of the property, pursuant to 24 CFR §92.300.

c) Applicants may be ineligible for funding if they meet any of the criteria listed in §53.42 of the Department's HOME rule, and ineligibility with any requirements under 10 TAC §49.5(a) excluding paragraphs (5) - (8). Applicants are encouraged to familiarize themselves with the Department's certification and debarment policies prior to application submission.

5) Matching Funds

Applicants will be required to submit documentation on all financial resources to be used in the development that may be considered match to the Department's federal HOME requirements. Applicants must provide firm commitments as defined in accordance with the Federal HOME rules at 24 CFR §92.218 and the Department's Match Guide and will be provided with the appropriate forms and instructions on how to report eligible match.

6) Rental Housing Development Affordability Requirements

a) Applicants should be aware that there are minimum affordability standards necessary for HOME assisted rental developments. Initial occupancy income restrictions require that at least 90% of the units are affordable to persons below 60% AMFI and that 20% of the units are affordable to person below 50% AMFI. Over the remaining affordability period, at least 20% of HOME assisted units should be affordable to persons earning 50% or less than the AMFI, all remaining units must be affordable to persons earning 80% or less than the AMFI.

b) Each development will have a two-tier affordability term.

i) The first tier will entail the federally required affordability term. For new construction or acquisition of new housing, this term is twenty (20) years. For rehabilitation or acquisition of existing housing, the term is five (5) years if the HOME investment is less than $15,000 per unit; ten (10) years if the HOME investment is $15,000 to $40,000 per unit; and fifteen (15) years if the HOME investment is greater than $40,000 per unit. This first tier is subject to all federal laws and regulations regarding HOME requirements, recapture, net proceeds and affordability.

ii) The second tier of affordability is the additional number of years required to bring the total term of affordability up to thirty (30) years or the term of the loan agreement. For example, the second tier of affordability on a 10-year federal affordability term is twenty (20) additional years. The second tier, or remaining term, is subject only to state regulations and affordability requirements.

c) Properties will be restricted under a Land Use Restriction Agreement ("LURA"), or other such instrument as determined by the Department for these terms. Among other restrictions, the LURA may

require the owner of the property to continue to accept subsidies which may be offered by the federal government, prohibit the owner from exercising an option to prepay a federally insured loan, impose tenant income-based occupancy and rental restrictions, or impose any of these and other restrictions as deemed necessary at the sole discretion of the Department in order to preserve the property as affordable housing on a case-by-case basis.

7) Site and Development Restrictions

a) Pursuant to 24 CFR §92.251, housing that is constructed or rehabilitated with HOME funds must meet all applicable local codes, rehabilitation standards, ordinances, and zoning ordinances at the time of project completion. In the absence of a local code for new construction or rehabilitation, HOME-assisted new construction or rehabilitation must meet, as applicable, one of three model codes: Uniform Building Code (ICBO), National Building Code (BOCA), Standard (Southern) Building Code (SBCCI); or the Council of American Building Officials (CABO) one or two family code; or the Minimum Property Standards (MPS) in 24 CFR §200.925 or §200.926. To avoid duplicative inspections when Federal Housing Administration (FHA) financing is involved in a HOME-assisted property, a participating jurisdiction may rely on a Minimum Property Standards (MPS) inspection performed by a qualified person. Newly constructed housing must meet the current edition of the Model Energy Code published by the Council of American Building Officials.

b) All other HOME-assisted housing (e.g., acquisition) must meet all applicable State and local housing quality standards and code requirements and if there are no such standards or code requirements, the housing must meet the housing quality standards in 24 CFR §982.401. When HOME funds are used for a rehabilitation development the entire unit must be brought up to the applicable property standards, pursuant to 24 CFR §92.251(a)(1).

c) Housing must meet the accessibility requirements at 24 CFR Part 8, which implements §504 of the Rehabilitation Act of 1973 (29 U.S.C. §794) and covered multifamily dwellings, as defined at 24 CFR §100.201, must also meet the design and construction requirements at 24 CFR §100.205, which implement the Fair Housing Act (42 U.S.C. §§3601-3619). Additionally, pursuant to the 2009 Qualified Allocation Plan (QAP), §49.9(h)(4)(H), Developments involving New Construction (excluding New Construction of nonresidential buildings) where some Units are two-stories and are normally exempt from Fair Housing accessibility requirements, a minimum of 20% of each Unit type (i.e. one bedroom, two bedroom, three bedroom) must provide an accessible entry level and all common-use facilities in compliance with the Fair Housing Guidelines, and include a minimum of one bedroom and one bathroom or powder room at the entry level. A certification will be required after the Development is completed from an inspector, architect, or accessibility specialist. Any Developments designed as single family structures must also satisfy the requirements of §2306.514, Texas Government Code.

d) All of the current Qualified Allocation Plan and Rules 10 TAC §49.6, excluding subsections (d), (f), (g) and (h) apply.

e) Developments involving new construction will be limited to 252 Units. These maximum Unit limitations also apply to those Developments which involve a combination of rehabilitation and new construction. Developments that consist solely of acquisition/rehabilitation or rehabilitation only may exceed the maximum Unit restrictions. The minimum number of units shall be 4 units, pursuant to 10 TAC §53.45(b).

8) Threshold Criteria

a) Housing units subsidized by HOME funds must be affordable to low, very-low or extremely low-income persons. Mixed Income rental developments may only receive funds for units that meet the HOME program affordability standards. All applications intended to serve persons with disabilities must adhere to the Department's Integrated Housing Rule at 10 TAC §1.15.

b) For funds being used for Rental Housing Developments, the Recipient must establish a reserve account consistent with §2306.186, Texas Government Code, and as further described in 10 TAC §1.37, pursuant to 10 TAC §53.45(c).

c) All applications will be required to meet Section 8 Housing Quality Standards detailed under 24 CFR §982.401, Texas Minimum Construction Standards, as well as the Fair Housing Accessibility Standards and §504 of the Rehabilitation Act of 1973. Developments must also meet all local building codes or standards that may apply. If the development is located within a jurisdiction that does not have building codes, developments must meet the most current International Building Code.

d) Pursuant to 10 TAC §53.8(a), Applicants for Rental Development activities will be required to provide written notification to each of the following persons or entities fourteen (14) days prior to the submission of any application package. Failure to provide written notifications fourteen (14) days prior to the submission of an application package at a minimum will cause an application to be terminated under competitive application cycles. Applicants must provide notifications to:

i) the executive officer and elected members of the governing board of the community where the development will be located. This includes municipal governing boards, city councils, and County governing boards;

ii) all neighborhood organizations whose defined boundaries include the location of the Development;

iii) executive officer and Board President of the school district that covers the location of the Development;

iv) residents of occupied housing units that may be rehabilitated, reconstructed or demolished; and

v) the State Representative and State Senator whose district covers the location of the Development.

vi) the notification letter must include, but not be limited to, the address of the development site, the number of units to be built or rehabilitated, the proposed rent and income levels to be served, and all other details required of the NOFA and Application Manual.

e) The following Threshold Criteria listed in this subsection are mandatory requirements at the time of Application submission unless specifically indicated otherwise:

i) To encourage the inclusion of families and individuals with the highest need for affordable housing, applicants for rental housing development must target a minimum of 5% of the total units for individuals or families earning 30% or less of area median family income for the development site. Additionally, 20% of the total units proposed must be HOME units. Developments with existing and continuing USDA 515 program loans and rental assistance or project-based Section 8 are exempt from this minimum target requirement.

ii) All units targeting Extremely Low Income households at 30% of area median income and 30% of area median income must also restrict rents at comparable levels using the Housing Tax Credit program rents calculated annually by the Department and available on the Department's website (www.tdhca.state.tx.us). These additional restrictions will limit the tenant paid portion of the rent and any applicable utility allowance.

iii) If the Applicant elects to restrict 10% of all units for households at or below 30% of AMFI and at least 50% of all units for households at or below 50% of AMFI, and those units are not designated to serve very or extremely low-income households through another subsidy source with the exception of developments with existing and continuing USDA 515 program loans and rental assistance or project-based Section 8, the Department may allow a forgivable loan only for those extremely and/or very low-income units. Developments layered with Housing Tax Credits are not eligible for this optional election unless the funds are deducted from eligible basis. Applications must still meet the requirements of the Real Estate Analysis (REA) Rules and Guidelines in 10 TAC §1.32.

iv) Staff will not recommend to the Department's Governing Board any contingent payment loans except for applications with first lien debt that is insured by HUD or the Federal Housing Administration (FHA) or for applications with other lenders with which the Department has a Memorandum of Agreement permitting such contingent payment debt structures. All contingent payment loans must also meet the minimum debt coverage ratio requirements in the Real Estate Analysis Rules and Guidelines described in 10 TAC §1.32.

v) To encourage the involvement of other public agencies and private entities in affordable housing, applicants must provide a minimum percentage of the total development costs in loans, in-kind contributions, or grants from third-party public or private entities as identified in §2(c) of this NOFA.

vi) All of the Qualified Allocation Plan and Rules in effect at the time of application submission at 10 TAC §49.9(h), excluding paragraph (4)(J), (11), (12), (14)(G) and (15).

vii) An applicant is not eligible to apply for funds or any other assistance from the Department unless audits are current at the time of application or the Audit Certification Form has been submitted to the Department in a satisfactory format on or before the application deadline for funds or other assistance per 10 TAC §1.3(b).

9) Review Process

a) Pursuant to 10 TAC §53.48, each application will be handled on a first-come, first-served basis as further described in this section. Each application will be assigned a Received Date based on the date and time it is physically received by the Division. Then each application will be reviewed on its own merits in three review phases, as applicable. Applications will continue to be prioritized for funding based on their Received Date unless they do not proceed into the next phase(s) of review. Applications proceeding in a timely fashion through a phase will take priority over applications that may have an earlier Received Date but that did not timely complete a phase of review. Applications will be reviewed for Applicant and Activity Eligibility, Threshold Criteria, and Financial Feasibility as described in this NOFA.

i) Phase One will begin as of the Received Date and will include a review of eligibility and threshold criteria and all Application requirements. The Department will ensure review of materials required under the NOFA and ASPM and will issue a notice of any Administrative Deficiencies for threshold criteria and eligibility within forty-five (45) days of the Received Date. Applicants who are able to resolve their Administrative Deficiencies within five (5) business days will be forwarded into Phase Two, if applicable. Applications with Administrative Deficiencies not cured within five (5) business days, will be terminated and must reapply for consideration of funds.

ii) Phase Two will include a comprehensive review for financial feasibility. Financial feasibility reviews will be conducted by the Real Estate Analysis (REA) Division consistent with 10 TAC §1.32. REA will create an underwriting report identifying staff's recommended Loan terms, the Loan or Grant amount and any conditions to be placed on the Development. The Department will issue a notice of any Administrative Deficiencies within forty-five (45) days of the date the Application enters Phase Two. Applicants who are able to resolve their Administrative Deficiencies within five (5) business days will be forwarded into Phase Three, if applicable. Applications with Administrative Deficiencies not satisfied within five (5) business days, will be terminated and must reapply for consideration of funds. Applications that have completed this Phase and do not require additional review in Phase Three will be considered for placement on the next available Board meeting agenda.

iii) Phase Three will only entail the review of the CHDO Certification Application. The Department will ensure review of these materials and issue notice of any Administrative Deficiencies on the CHDO Certification Application within thirty (30) days of the Application enters Phase Three. Applicants who are able to resolve their Administrative Deficiencies within five (5) business days will be forwarded into the final review phase of the Application process. Applications with Administrative Deficiencies not cured within five (5) business days, will be terminated and must reapply for consideration of funds. Only upon satisfaction of all Administrative Deficiencies will the Application be forwarded to the final phase of the Application process. Upon completion of the applicable final review phase, the Application will be considered for placement on the next available Board meeting agenda.

iv) Because Applications are processed in the order they are received by the Department, it is possible that the Department will expend all available HOME funds before an Application has completed all phases of its review. In the case that all HOME funds are committed before an Application has completed all phases of the review process, the Department will notify the applicant that their application will remain active for ninety (90) days in its current phase. If new HOME funds become available, Applications will continue onward with their review without losing their Received Date priority. If HOME funds do not become available within ninety (90) days of the notification, the Applicant will be notified that their Application is no longer under consideration. The Applicant must reapply to be considered for future funding. If on the date an Application is received by the Department, no funds are available under this NOFA, the Applicant will be notified that no funds exist under the NOFA and the Application will not be processed.

b) Pursuant to 10 TAC §53.42 if a submitted Application has an entire Volume of the application missing; has excessive omissions of documentation from the Threshold Criteria or Uniform Application documentation; or is so unclear, disjointed or incomplete that a thorough review cannot reasonably be performed by the Department, as determined by the Department, will be terminated with notice and rights to appeal but without being processed as an Administrative Deficiency. To the extent that a review was unable to be performed, specific reasons for the Department's determination of ineligibility will be included in the termination letter to the Applicant.

c) A site visit will be conducted as part of the HOME Program development feasibility review. Applicants must receive recommendation for approval from the Department to be considered for HOME funding by the Board.

d) The Department may decline to consider any Application if the proposed activities do not, in the Department's sole determination, represent a prudent use of the Department's funds. The Department is not obligated to proceed with any action pertaining to any Applications which are received, and may decide it is in the Department's best interest to refrain from pursuing any selection process. The Department strives, through its loan terms, to securitize its funding while ensuring the financial feasibility of a Development. The Department reserves the right to negotiate individual elements of any Application.

e) In accordance with §2306.082 Texas Government Code and 10 TAC §53.6, it is the Department's policy to encourage the use of appropriate alternative dispute resolution procedures ("ADR") under the Governmental Dispute Resolution Act, Chapter 2009, Texas Government Code, to assist in resolving disputes under the Department's jurisdiction. As described in Chapter 154, Civil Practices and Remedies Code, ADR procedures include mediation. Except as prohibited by the Department's ex parte communications policy, the Department encourages informal communications between Department staff and Applicants, and other interested persons, to exchange information and informally resolve disputes. The Department also has administrative appeals processes to fairly and expeditiously resolve disputes. If at anytime an Applicant or other person would like to engage the Department in an ADR procedure, the person may send a proposal to the Department's Dispute Resolution Coordinator. For additional information on the Department's ADR Policy, see the Department's General Administrative Rule on ADR at 10 Texas Administrative Code §1.17.

f) An Applicant may appeal decisions made by staff in accordance with 10 TAC §1.7.

10) Application Submission

a) All applications submitted under this NOFA must be received on or before 5:00 p.m. on April 30, 2009. The Department will accept applications from 8:00 a.m. to 5:00 p.m. each business day, excluding federal and state holidays from the date this NOFA is published on the Department's web site until the deadline. For questions regarding this NOFA please contact Cameron Dorsey at (512) 475-2669 or via e-mail at cameron.dorsey@tdhca.state.tx.us.

b) If an Application is submitted to the Department that requests funds from two separate housing finance programs, the Application will be handled in accordance with the guidelines for each housing program. The Applicant is responsible for adhering to the deadlines and requirements of both programs.

c) All applications must be submitted, and provide all documentation, as described in this NOFA and associated application materials.

d) Applicants must submit the Application materials as detailed in the Final ASPM in effect at the time the application is submitted. All scanned copies must be scanned in accordance with the guidance provided in the Final ASPM in effect at the time the application is submitted.

e) The application consists of several parts as further described in the Final ASPM. A complete application for each proposed development must be submitted in an electronic PDF format on a recordable compact disc (CD-R). Incomplete applications or improperly compiled applications will not be accepted. Applicants must submit the application materials as detailed in the Final ASPM in effect at the time the application is submitted.

f) Third party reports - If all applicable third party reports are not received at the time of application submission, the Application will be terminated.

g) If a development has an existing Housing Tax Credit allocation or HOME contract with the Department and construction on the development has not begun, an abbreviated application for a HOME award or for an increase in the existing HOME award can be submitted under this NOFA. If additional funds are sought, such an application may also request that the terms for the additional HOME funds also apply for the funds in existing HOME Contract. The entire amount of HOME funds received from the Department may not exceed the maximum award per development as reflected in this NOFA. An application qualifying for the abbreviated application process may be considered by staff to have already met the threshold requirements in Section (8)(e)(vi) of this NOFA without additional review unless staff determines additional documentation is required in accordance with paragraph (h) below.

h) The requirements of the abbreviated application will be reflected in the Application Submission Procedures Manuel (ASPM). In addition to the application requirements in the ASPM, staff may use discretion to determine if additional information that is typically required in the full application (including third party reports) is necessary or prudent in order to review for compliance with state or federal rules or due to changes in the market since last reviewed by the Department. Full application and an amendment may be required for any application that includes changes to the previous Board approved application beyond those that are directly related to the development costs, financing structure or additional HOME program related requirements or that affect an existing allocation of Housing Tax Credits.

i) All Application materials including manuals, NOFA, program guidelines, and all applicable HOME rules, will be available on the Department's website at www.tdhca.state.tx.us. Applications will be required to adhere to the HOME Rule and threshold requirements in effect at the time of the Application submission. Applications must be on forms provided by the Department, and cannot be altered or modified and must be in final form before submitting them to the Department.

j) Applicants are required to remit a non-refundable Application fee payable to the Texas Department of Housing and Community Affairs in the amount of $500.00 per Application. Payment must be in the form of a check, cashier's check or money order. Do not send cash. §2306.147(b) of the Texas Government Code requires the Department to waive Application fees for nonprofit organizations that offer expanded services such as child care, nutrition programs, job training assistance, health services, or human services. These organizations must include proof of their exempt status and a description of their supportive services in lieu of the Application fee. An Application fee is not required for applications submitted pursuant to Paragraph (g) above and that have an existing HOME Contract with the Department. The Application fee is not a reimbursable cost under the HOME Program.

k) Applications must be sent via overnight delivery to:

HOME Division

Texas Department of Housing and Community Affairs

Attn: Barbara Skinner

221 East 11th Street

Austin, Texas 78701-2410

or via the U.S. Postal Service to:

HOME Division

Texas Department of Housing and Community Affairs

Attn: Barbara Skinner

Post Office Box 13941

Austin, Texas 78711-3941

NOTE: This NOFA does not include the text of the various applicable regulatory provisions that may be important to the particular HOME CHDO Rental Housing Development Program. For proper completion of the application, the Department strongly encourages potential applicants to review all applicable State and Federal regulations.

TRD-200806610

Michael Gerber
Executive Director
Texas Department of Housing and Community Affairs
Filed: December 19, 2008

♦ ♦ ♦

HOME Investment Partnerships Program Rental Housing Development Program Notice of Funding Availability (NOFA)

1) Summary

The Texas Department of Housing and Community Affairs ("the Department") announces the availability of approximately $19,486,052 in funding from the HOME Investment Partnerships Program for the development of affordable rental housing for low-income Texans. The availability and use of these funds is subject to the State HOME Rules at Title 10 Texas Administrative Code (TAC) Chapter 53 ("HOME Rules") in effect at the time application is submitted, the Federal HOME regulations governing the HOME program (24 CFR Part 92), and Chapter 2306, Texas Government Code. Other Federal regulations may also apply such as, but not limited to, 24 CFR Parts 50 and 58 for environmental requirements, Davis-Bacon Act for labor standards, 24 CFR §85.36 and §84.42 for conflict of interest and 24 CFR Part 5, Subpart A for fair housing. Applicants are encouraged to familiarize themselves with all of the applicable state and federal rules that govern the program.

2) Allocation of HOME Funds

a) These funds are made available through the Department's allocation of HOME funds from the U.S. Department of Housing and Urban Development (HUD). These HOME funds have been set-aside for rental housing development activities. At least $2,000,000 of these funds are set-aside for rental development proposals which involve the acquisition and rehabilitation of existing affordable housing that is at-risk of losing the benefit of a subsidy in the form of a below-market interest rate loan, interest rate reduction, rental subsidy, Section 8 housing assistance payment, rental supplement payment, rental assistance payment, or equity incentive. The remaining funds will be available to all eligible applicants for rental development activities. Applications for the Preservation Set-Aside must include evidence that any stipulation to maintain affordability in the contract granting the subsidy is at-risk of expiring, or that the federally insured mortgage on the Development is eligible for prepayment, within the next twenty-four (24) months from the date of application submission. An Application for a Development that includes the demolition of the existing units which have received any of the previously listed benefits will not qualify as a Preservation Development unless the redevelopment will include the same site and is supplemented with HOPE VI funding or funding from the Local Housing Authority's capital grant fund. All funds released under this NOFA are to be used for the creation of affordable rental housing for low-income Texans earning 80% or less of the Area Median Family Income (AMFI).

b) In accordance with 10 TAC §53.48, this NOFA will be conducted as an open application cycle and funding will be available on a first-come, first-served basis. Applications submitted prior to 5:00 p.m. on August 25, 2008 were subject to the Regional Allocation Formula. Any funds not requested in an application received by 5:00 p.m. August 25, 2008, have collapsed into an open application cycle with funding available statewide and not subject to the RAF. Applicants are encouraged to review the application process cited above and described herein. Applications that do not meet minimum threshold and financial feasibility will not be considered for funding. Based on the availability of funds, applications for the statewide open application cycle will be accepted until 5:00 p.m. April 30, 2009.

c) The Department awards HOME funds, typically as a loan, to eligible recipients for the provision of housing for low, very low and extremely low-income individuals and families, pursuant to 10 TAC §53.41. Award amounts are limited to no more than $3 million per development unless the Applicant is certified by the Department as a Community Housing Development Organization (CHDO). Awards amounts are limited to no more than $4 million per development for CHDOs. The minimum HOME award may not be less than $1,000 per HOME assisted unit. The maximum award may not exceed 90% of the Total Development Costs ("TDC") unless a resolution of support and commitment for a financial contribution to the development is made by the local unit of government in which the proposed development resides or the proposed development is located in an area where the HUD Fair Market Rents are less than the Calculated HOME Rents but will be limited follows:

Maximum HOME Award Based on Total Development Costs (TDC)

Rent	Resolution from Local Government	Max award as Percentage of TDC	Percent of TDC from other sources
FMR greater than High Home	No	90%	10%
FMR greater than High Home	Yes	92%	8%
FMR less than or equal to High Home	No	93%	7%
FMR less than or equal to High Home	Yes	95%	5%
FMR less than or equal to Low Home	No	96%	4%
FMR less than or equal to Low Home	Yes	98%	2%

d) The remaining percentage of total development cost must be in the form of permanent loans with a maturity of at least twenty (20) years, in-kind contributions or grants from third-party private or public entities. Developments with USDA or other government-sponsored loans that will remain as permanent financing may be used to satisfy this requirement from a public or private entity. Loans or grants from the Department will not satisfy this requirement. The per-unit subsidy may not exceed the per-unit dollar limits established by the United States Department of Housing and Urban Development (HUD) under §221(d)(3) of the National Housing Act, which are applicable to the area in which the development is located, and as published by HUD. The Department's underwriting guidelines in 10 TAC §1.32 will be used which set as a feasibility criterion a 1.15 debt coverage ratio minimum. Where the anticipated debt coverage ratio in the year after completion exceeds 1.35 before considering the proposed HOME funds, a repayable loan, in whole or part, will be recommended.

e) Each CHDO that is awarded HOME funds may also be eligible to receive a grant for CHDO Operating Expenses. Applicants will be required to submit organizational operating budgets, audits and other financial and non-financial materials detailed in the HOME application. The award amount for CHDO Operating Expenses shall not exceed $50,000. Awards for operating expenses will be drawn over a two-year period of time. The Department reserves the right to limit an Applicant to receive not more than one award of CHDO Operating Expenses during the same fiscal year and to further limit the award of CHDO Operating Expenses.

f) Developments involving rehabilitation must establish that the rehabilitation will substantially improve the condition of the housing and will involve at least $15,000 per unit in direct hard costs, unless the property is also being financed by the United States Department of Agriculture's Rural Development program. When HOME funds are used for a rehabilitation development the entire unit must be brought up to the applicable property standards, pursuant to 24 CFR §92.251(a)(1).

g) When Department funds will have a first lien position and funds are used for new construction and/or rehabilitation, assurance of completion of the development in the form of payment and performance bonds in the full amount of the construction contract will be required. Such assurance of completion will run to the Department as obligee and must be documented prior to closing.

3) Eligible and Prohibited Activities

a) Eligible activities will include those permissible under the federal HOME Rule at 24 CFR §92.205, the State HOME Rules at 10 TAC §53.34 and §53.50, which involve only the acquisition, rehabilitation or construction of affordable rental developments.

b) Prohibited activities include those under federal HOME rules at 24 CFR §92.214 and 10 TAC §53.37.

c) Rental development funds will not be eligible for use in a Participating Jurisdiction (PJ). Any HOME funds available for serving households in a PJ will only be made available under a separate NOFA for Persons with Disabilities as described in the 2009 State of Texas Consolidated Plan One-Year Action Plan.

d) Refinancing of federally financed properties or use of HOME funds for properties constructed within five (5) years of the submission of an Application for assistance will not be permissible.

4) Eligible and Ineligible Applicants

a) The Department provides HOME funding to qualified nonprofit organizations, for-profit entities, sole proprietors, public housing authorities and units of general local government.

b) Applicants may be ineligible for funding if they meet any of the criteria listed in §53.42 of the Department's HOME rule, and ineligibility with any requirements under 10 TAC §49.5(a) excluding subsections (5) - (8). Applicants are encouraged to familiarize themselves with the Department's certification and debarment policies prior to application submission.

5) Matching Funds

Applicants will be required to submit documentation on all financial resources to be used in the development that may be considered match to the Department's federal HOME requirements. Applicants must provide firm commitments as defined in accordance with the Federal HOME rules at 24 CFR §92.218 and the Department's Match Guide and will be provided with the appropriate forms and instructions on how to report eligible match.

6) Rental Housing Development Affordability Requirements

a) Applicants should be aware that there are minimum affordability standards necessary for HOME assisted rental developments. Initial occupancy income restrictions require that at least 90% of the units are affordable to persons below 60% AMFI and that 20% of the units are affordable to person below 50% AMFI. Over the remaining affordability period at least 20% of HOME assisted units should be affordable to persons earning 50% or less than the AMFI, all remaining units must be affordable to persons earning 80% or less than the AMFI.

b) Each development will have a two-tier affordability term.

i) The first tier will entail the federally required affordability term. For new construction or acquisition of new housing, this term is twenty (20) years. For rehabilitation or acquisition of existing housing, the term is five (5) years if the HOME investment is less than $15,000 per unit; ten (10) years if the HOME investment is $15,000 to $40,000 per unit; and fifteen (15) years if the HOME investment is greater than $40,000 per unit. This first tier is subject to all federal laws and regulations regarding HOME requirements, recapture, net proceeds and affordability.

ii) The second tier of affordability is the additional number of years required to bring the total term of affordability up to thirty (30) years or the term of the loan agreement. For example, the second tier of affordability on a 10-year federal affordability term is twenty (20) additional years. The second tier, or remaining term, is subject only to state regulations and affordability requirements.

c) Properties will be restricted under a Land Use Restriction Agreement ("LURA"), or other such instrument as determined by the Department for these terms. Among other restrictions, the LURA may require the owner of the property to continue to accept subsidies which may be offered by the federal government, prohibit the owner from exercising an option to prepay a federally insured loan, impose tenant income-based occupancy and rental restrictions, or impose any of these and other restrictions as deemed necessary at the sole discretion of the Department in order to preserve the property as affordable housing on a case-by-case basis.

7) Site and Development Restrictions

a) Pursuant to 24 CFR §92.251, housing that is constructed or rehabilitated with HOME funds must meet all applicable local codes, rehabilitation standards, ordinances, and zoning ordinances at the time of project completion. In the absence of a local code for new construction or rehabilitation, HOME-assisted new construction or rehabilitation must meet, as applicable, one of three model codes: Uniform Building Code (ICBO), National Building Code (BOCA), Standard (Southern) Building Code (SBCCI); or the Council of American Building Officials (CABO) one or two family code; or the Minimum Property Standards (MPS) in 24 CFR §200.925 or §200.926. To avoid

duplicative inspections when Federal Housing Administration (FHA) financing is involved in a HOME-assisted property, a participating jurisdiction may rely on a Minimum Property Standards (MPS) inspection performed by a qualified person. Newly constructed housing must meet the current edition of the Model Energy Code published by the Council of American Building Officials.

b) All other HOME-assisted housing (e.g., acquisition) must meet all applicable State and local housing quality standards and code requirements and if there are no such standards or code requirements, the housing must meet the housing quality standards in 24 CFR §982.401. When HOME funds are used for a rehabilitation development the entire unit must be brought up to the applicable property standards, pursuant to 24 CFR §92.251(a)(1).

c) Housing must meet the accessibility requirements at 24 CFR Part 8, which implements §504 of the Rehabilitation Act of 1973 (29 U.S.C. §794) and covered multifamily dwellings, as defined at 24 CFR §100.201, must also meet the design and construction requirements at 24 CFR §100.205, which implement the Fair Housing Act (42 U.S.C. 3601 - 3619). Additionally, pursuant to the 2009 Qualified Allocation Plan (QAP), 10 TAC §49.9(h)(4)(H), Developments involving New Construction (excluding New Construction of nonresidential buildings) where some Units are two-stories and are normally exempt from Fair Housing accessibility requirements, a minimum of 20% of each Unit type (i.e. one bedroom, two bedroom, three bedroom) must provide an accessible entry level and all common-use facilities in compliance with the Fair Housing Guidelines, and include a minimum of one bedroom and one bathroom or powder room at the entry level. A certification will be required after the Development is completed from an inspector, architect, or accessibility specialist. Any Developments designed as single family structures must also satisfy the requirements of §2306.514, Texas Government Code.

d) All of the current Qualified Allocation Plan and Rules 10 TAC §49.6, excluding subsections (d), (f), (g) and (h) apply.

e) Developments involving new construction will be limited to 252 Units. These maximum Unit limitations also apply to those Developments which involve a combination of rehabilitation and new construction. Developments that consist solely of acquisition/rehabilitation or rehabilitation only may exceed the maximum Unit restrictions. The minimum number of units shall be 4 units, pursuant to 10 TAC §53.45(b).

8) Threshold Criteria

a) Housing units subsidized by HOME funds must be affordable to low, very-low or extremely low-income persons. Mixed Income rental developments may only receive funds for units that meet the HOME program affordability standards. All applications intended to serve persons with disabilities must adhere to the Department's Integrated Housing Rule at 10 TAC §1.15.

b) For funds being used for Rental Housing Developments, the Recipient must establish a reserve account consistent with §2306.186, Texas Government Code, and as further described in 10 TAC §1.37, pursuant to 10 TAC §53.45(c).

c) All applications will be required to meet Section 8 Housing Quality Standards detailed under 24 CFR §982.401, Texas Minimum Construction Standards, as well as the Fair Housing Accessibility Standards and §504 of the Rehabilitation Act of 1973. Developments must also meet all local building codes or standards that may apply. If the development is located within a jurisdiction that does not have building codes, developments must meet the most current International Building Code.

d) Pursuant to 10 TAC §53.8(a), Applicants for Rental Development activities will be required to provide written notification to each of the following persons or entities fourteen (14) days prior to the submission of any application package. Failure to provide written notifications fourteen (14) days prior to the submission of an application package at a minimum will cause an application to be terminated under competitive application cycles. Applicants must provide notifications to:

i) the executive officer and elected members of the governing board of the community where the development will be located. This includes municipal governing boards, city councils, and County governing boards;

ii) all neighborhood organizations whose defined boundaries include the location of the Development;

iii) executive officer and Board President of the school district that covers the location of the Development;

iv) residents of occupied housing units that may be rehabilitated, reconstructed or demolished; and

v) the State Representative and State Senator whose district covers the location of the Development.

vi) the notification letter must include, but not be limited to, the address of the development site, the number of units to be built or rehabilitated, the proposed rent and income levels to be served, and all other details required of the NOFA and Application Manual.

e) The following Threshold Criteria listed in this subsection are mandatory requirements at the time of Application submission unless specifically indicated otherwise:

i) To encourage the inclusion of families and individuals with the highest need for affordable housing, applicants must target a minimum of 5% of the total units for individuals or families earning 30% or less of area medium income for the development site. Additionally, 20% of the total units proposed must be HOME units. Developments with existing and continuing USDA 515 program loans and rental assistance or project-based Section 8 are exempt from this minimum target requirement.

ii) If the Applicant elects to restrict 10% of all units for households at or below 30% of AMFI and at least 50% of all units for households at or below 50% of AMFI, and those units are not designated to serve very or extremely low-income households through another subsidy source with the exception of developments with existing and continuing USDA 515 program loans and rental assistance or project-based Section 8, the Department may allow a forgivable loan only for those extremely and/or very low-income units. Developments layered with Housing Tax Credits are not eligible for this optional election unless the funds are deducted from eligible basis. Applications must still meet the requirements of the Real Estate Analysis (REA) Rules and Guidelines in 10 TAC §1.32.

iii) Staff will not recommend to the Department's Governing Board any contingent payment loans except for applications with first lien debt that is insured by HUD or the Federal Housing Administration (FHA) or for applications with other lenders with which the Department has a Memorandum of Agreement permitting such contingent payment debt structures. All contingent payment loans must also meet the minimum debt coverage ratio requirements in the Real Estate Analysis Rules and Guidelines described in 10 TAC §1.32.

iv) All units targeting Extremely Low Income households at 30% of area median income and 30% of area median income must also restrict rents at comparable levels using the Housing Tax Credit program rents calculated annually by the Department and available on the Department's website (www.tdhca.state.tx.us). These additional restrictions will limit the tenant paid portion of the rent and any applicable utility allowance.

v) To encourage the involvement of other public agencies and private entities in affordable housing, applicants must provide a minimum percentage of the total development costs in loans, in-kind contributions, or grants from third-party public or private entities as identified in section (2)(c) of this NOFA.

vi) All of the Qualified Allocation Plan and Rules in effect at the time of application submission at 10 TAC §49.9(h), excluding subsections (4)(J), (11), (12), (14)(G) and (15).

vii) To qualify for up to $4 million per development and/or a grant for CHDO Operating Expenses the application must qualify for HOME CHDO funding. HOME CHDO funding is provided to qualified nonprofit organizations eligible for CHDO certification. CHDO Applicants must be the Sponsor, Owner or Developer of the proposed Development. Applicants who apply through a Limited Partnership will be required to provide evidence, at the time of CHDO certification and commitment, that the CHDO Applicant is the Managing General Partner of the partnership and has effective control (decision making authority) over the development and management of the property, pursuant to 24 CFR §92.300. CHDO Certification will be awarded in accordance with the rules and procedures as set forth in the HOME rules at 10 TAC §53.50, Community Housing Development Organization (CHDO) Certification. A separate application process is required for CHDO Certification. Review and approval of the CHDO Certification occurs during the threshold review process, however Applicants will not receive a formal certification until the award of the HOME funds has been approved by the Department's Board. The CHDO Application package will be available with all other application materials on the Department's website. A new Application for CHDO certification must be submitted to the Department with each new Application for HOME Development funds under the CHDO set aside.

viii) An applicant is not eligible to apply for funds or any other assistance from the Department unless audits are current at the time of application or the Audit Certification Form has been submitted to the Department in a satisfactory format on or before the application deadline for funds or other assistance per 10 TAC §1.3(b).

9) Review Process

a) Pursuant to 10 TAC §53.48, each application will be handled on a first-come, first-served basis as further described in this section. Each application will be assigned a Received Date based on the date and time it is physically received by the Division. Then each application will be reviewed on its own merits in three review phases, as applicable. Applications will continue to be prioritized for funding based on their Received Date unless they do not proceed into the next phase(s) of review. Applications proceeding in a timely fashion through a phase will take priority over applications that may have an earlier Received Date but that did not timely complete a phase of review. Applications will be reviewed for Applicant and Activity Eligibility, Threshold Criteria, and Financial Feasibility as described in this NOFA.

i) Phase One will begin as of the Received Date and will include a review of eligibility and threshold criteria and all Application requirements. The Department will ensure review of materials required under the NOFA and ASPM and will issue a notice of any Administrative Deficiencies for threshold criteria and eligibility within forty-five (45) days of the Received Date. Applicants who are able to resolve their Administrative Deficiencies within five (5) business days will be forwarded into Phase Two, if applicable. Applications with Administrative Deficiencies not cured within five (5) business days, will be terminated and must reapply for consideration of funds.

ii) Phase Two will include a comprehensive review for financial feasibility for RHD and Single Family Development Program Activities. Financial feasibility reviews will be conducted by the Real Estate Analysis (REA) Division consistent with 10 TAC §1.32 of this title. REA will create an underwriting report identifying staff's recommended Loan terms, the Loan or Grant amount and any conditions to be placed on the Development. The Department will issue a notice of any Administrative Deficiencies within forty-five (45) days of the date the Application enters Phase Two. Applicants who are able to resolve their Administrative Deficiencies within five (5) business days will be forwarded into Phase Three, if applicable. Applications with Administrative Deficiencies not satisfied within five (5) business days, will be terminated and must reapply for consideration of funds. Applications that have completed this Phase and do not require additional review in Phase Three will be considered for placement on the next available Board meeting agenda.

iii) Phase Three will only entail the review of the CHDO Certification Application, if applicable. The Department will ensure review of these materials and issue notice of any Administrative Deficiencies on the CHDO Certification Application within thirty (30) days of the Application enters Phase Three. Applicants who are able to resolve their Administrative Deficiencies within five (5) business days will be forwarded into the final review phase of the Application process. Applications with Administrative Deficiencies not cured within five (5) business days, will be terminated and must reapply for consideration of funds or must elect to withdraw the CHDO Certification Application. Only upon satisfaction of all Administrative Deficiencies will the Application be forwarded to the final phase of the Application process. Upon completion of the applicable final review phase, the Application will be considered for placement on the next available Board meeting agenda.

iv) Because Applications are processed in the order they are received by the Department, it is possible that the Department will expend all available HOME funds before an Application has completed all phases of its review. In the case that all HOME funds are committed before an Application has completed all phases of the review process, the Department will notify the applicant that their application will remain active for ninety (90) days in its current phase. If new HOME funds become available, Applications will continue onward with their review without losing their Received Date priority. If HOME funds do not become available within ninety (90) days of the notification, the Applicant will be notified that their Application is no longer under consideration. The Applicant must reapply to be considered for future funding. If on the date an Application is received by the Department, no funds are available under this NOFA, the Applicant will be notified that no funds exist under the NOFA and the Application will not be processed.

b) Pursuant to the QAP and 10 TAC §53.42 if a submitted Application has an entire Volume of the application missing; has excessive omissions of documentation from the Threshold Criteria or Uniform Application documentation; or is so unclear, disjointed or incomplete that a thorough review cannot reasonably be performed by the Department, as determined by the Department, will be terminated with notice and rights to appeal but without being processed as an Administrative Deficiency. To the extent that a review was unable to be performed, specific reasons for the Department's determination of ineligibility will be included in the termination letter to the Applicant.

c) A site visit may be conducted as part of the HOME Program development feasibility review. Applicants must receive recommendation for approval from the Department to be considered for HOME funding by the Board.

d) The Department may decline to consider any Application if the proposed activities do not, in the Department's sole determination, represent a prudent use of the Department's funds. The Department is not obligated to proceed with any action pertaining to any Applications which are received, and may decide it is in the Department's best in-

terest to refrain from pursuing any selection process. The Department strives, through its loan terms, to securitize its funding while ensuring the financial feasibility of a Development. The Department reserves the right to negotiate individual elements of any Application.

e) In accordance with §2306.082, Texas Government Code and 10 TAC §53.6, it is the Department's policy to encourage the use of appropriate Alternative Dispute Resolution procedures ("ADR") under the Governmental Dispute Resolution Act, Chapter 2009, Texas Government Code, to assist in resolving disputes under the Department's jurisdiction. As described in Chapter 154, Civil Practices and Remedies Code, ADR procedures include mediation. Except as prohibited by the Department's ex parte communications policy, the Department encourages informal communications between Department staff and Applicants, and other interested persons, to exchange information and informally resolve disputes. The Department also has administrative appeals processes to fairly and expeditiously resolve disputes. If at anytime an Applicant or other person would like to engage the Department in an ADR procedure, the person may send a proposal to the Department's Dispute Resolution Coordinator. For additional information on the Department's ADR Policy, see the Department's General Administrative Rule on ADR at 10 TAC §1.17.

f) An Applicant may appeal decisions made by staff in accordance with 10 TAC §1.7.

10) Application Submission

a) All applications submitted under this NOFA must be received on or before 5:00 p.m. on April 30, 2009. The Department will accept applications from 8 a.m. to 5 p.m. each business day, excluding federal and state holidays from the date this NOFA is published on the Department's web site until the deadline. For questions regarding this NOFA please contact Cameron Dorsey at (512) 475-2669 or via e-mail at cameron.dorsey@tdhca.state.tx.us.

b) If an Application is submitted to the Department that requests funds from two separate housing finance programs, the Application will be handled in accordance with the guidelines for each housing program. The Applicant is responsible for adhering to the deadlines and requirements of both programs.

c) All applications must be submitted, and provide all documentation, as described in this NOFA and associated application materials.

d) Applicants must submit the Application materials as detailed in the Final ASPM in effect at the time the application is submitted. All scanned copies must be scanned in accordance with the guidance provided in the Final ASPM in effect at the time the application is submitted.

e) The application consists of several parts as described in the Final ASPM. A complete application for each proposed development must be submitted in an electronic PDF format on a recordable compact disc (CD-R). Incomplete applications or improperly compiled applications will not be accepted. Applicants must submit the application materials as detailed in the Final ASPM in effect at the time the application is submitted.

f) Third party reports - If all applicable third party reports are not received at the time of application submission, the Application will be terminated.

g) If a development has an existing Housing Tax Credit allocation or HOME contract with the Department and construction on the development has not begun, an abbreviated application for a HOME award or for an increase in the existing HOME award can be submitted under this NOFA. If additional funds are sought, such an application may also request that the terms for the additional HOME funds also apply for the funds in existing HOME Contract. The entire amount of HOME funds received from the Department may not exceed the maximum award per development as reflected in this NOFA. An application qualifying for the abbreviated application process may be considered by staff to have already met the threshold requirements in Section (8)(e)(vi) of this NOFA without additional review unless staff determines additional documentation is required in accordance with paragraph (h) below.

h) The requirements of the abbreviated application will be reflected in the Application Submission Procedures Manuel (ASPM). In addition to the application requirements in the ASPM, staff may use discretion to determine if additional information that is typically required in the full application (including third party reports) is necessary or prudent in order to review for compliance with state or federal rules or due to changes in the market since last reviewed by the Department. Full application and an amendment may be required for any application that includes changes to the previous Board approved application beyond those that are directly related to the development costs, financing structure or additional HOME program related requirements or that affect an existing allocation of Housing Tax Credits.

i) All Application materials including manuals, NOFA, program guidelines, and all applicable HOME rules, will be available on the Department's website at www.tdhca.state.tx.us. Applications will be required to adhere to the HOME Rule and threshold requirements in effect at the time of the Application submission. Applications must be on forms provided by the Department, and cannot be altered or modified and must be in final form before submitting them to the Department.

j) Applicants are required to remit a non-refundable Application fee payable to the Texas Department of Housing and Community Affairs in the amount of $500.00 per Application. Payment must be in the form of a check, cashier's check or money order. Do not send cash. Section 2306.147(b) of the Texas Government Code requires the Department to waive Application fees for nonprofit organizations that offer expanded services such as child care, nutrition programs, job training assistance, health services, or human services. These organizations must include proof of their exempt status and a description of their supportive services in lieu of the Application fee. An Application fee is not required for applications submitted pursuant to paragraph (g) above and that have an existing HOME Contract with the Department. The Application fee is not a reimbursable cost under the HOME Program.

k) Applications must be sent via overnight delivery to:

HOME Division

Texas Department of Housing and Community Affairs

Attn: Barbara Skinner

221 East 11th Street

Austin, Texas 78701-2410

or via the U.S. Postal Service to:

HOME Division

Texas Department of Housing and Community Affairs

Attn: Barbara Skinner

Post Office Box 13941

Austin, Texas 78711-3941

NOTE: This NOFA does not include the text of the various applicable regulatory provisions that may be important to the particular HOME Rental Housing Development Program. For proper completion of the application, the Department strongly encourages potential applicants to review all applicable State and Federal regulations.

TRD-200806609
Michael Gerber
Executive Director
Texas Department of Housing and Community Affairs
Filed: December 19, 2008

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Housing Trust Fund 2009 Texas Homeownership SuperNOFA Program Notice of Funding Availability (NOFA)

1) Summary.

a) The Texas Department of Housing and Community Affairs ("the Department") announces the availability of $1,000,000 in funding from the Housing Trust Fund (HTF) 2009 appropriation to fund housing assistance programs. Funds will be made available for Homebuyer Assistance (HBA) and Housing Rehabilitation Assistance (HRA).

b) The availability and use of these funds is subject to the Department's Housing Trust Fund Rule at 10 TAC Chapter 51 ("HTF Program Rule") and Chapter 2306, Texas Government Code, in effect at the time an application is submitted. Other regulations may also apply such as, but not limited to, 24 CFR §84.36 and §2306.5545, Texas Government Code, for conflict of interest, 24 CFR §5.609 for income qualification, 24 CFR Part 5, Subpart A for fair housing, and Chapter 2156, Texas Government Code, and the Uniform Grant Management Act (Chapter 783, Texas Government Code and 1 TAC Chapter 5) for procurement. Applicants are encouraged to familiarize themselves with all of the applicable rules that govern the program.

2) Appropriation of Housing Trust Funds.

a) Funds are made available through the Housing Trust Fund and are not subject to the Regional Allocation Formula. All funds released under this Notice of Funding Availability (NOFA) shall be used for the creation of affordable housing for eligible homebuyers earning 50% or less of the Area Median Family Income (AMFI) as defined by the U. S. Department of Housing and Urban Development (HUD).

b) This NOFA will be an Open Application Cycle and funding will be available on a first-come, first-served statewide basis (including Participating Jurisdictions). Applications will be accepted by the Department on regular business days until 5:00 p.m., Friday, May 1, 2009, regardless of method of delivery. Applicants are encouraged to review the application process cited in 10 TAC §51.8 and §51.12 and as described herein. Applications that do not meet minimum threshold criteria will not be considered for funding.

3) Limitation on Funds.

a) The Department awards 2009 Homeownership SuperNOFA funds to eligible organizations. The maximum award amount may not exceed $250,000, including project, administrative, and soft costs, per Program Activity.

b) Applicants may be eligible to receive up to 4% of project costs for funding for Administrative Costs. Administrative Costs may include:

i) Application intake and processing;

ii) Affirmative marketing and brochures;

iii) Travel costs for administration and contract training;

iv) Professional Services;

v) Construction and disbursement documentation preparation;

vi) Information services;

vii) Procurement of Contractor;

viii) Project document preparation;

ix) Schedule of values; and

x) Work write-up summary.

c) Soft costs are limited to 10% of project costs. Soft Costs may include:

i) Application intake and processing;

ii) Inspections;

iii) Procurement of Contractor;

iv) Schedule of values; and

v) Work write-up summary.

4) Activity and Applicant Eligibility.

a) Eligible and Prohibited Activities are specified in the Department's Housing Trust Fund Rule. Eligible Activities will include those permissible in 10 TAC §51.6. Prohibited Activities include those in 10 TAC §51.7.

b) Eligible Applicants are Units of General Local Government, Nonprofit Organizations, and Public Housing Agencies Authorities (PHA's). Applicants may be ineligible for funding if they meet any of the criteria listed in 10 TAC §51.8(d).

c) Applicants are encouraged to familiarize themselves with the Department's certification and debarment policies prior to application submission.

5) Affordability Requirements.

a) All Housing Trust Fund-assisted housing must follow the income qualification guidelines in 24 CFR §5.609.

b) Awarded organizations will provide the Homeownership SuperNOFA Program assistance to the homebuyer in the form of a loan. Each loan will be in the form of a 0% interest, deferred forgivable loan with a term based on the Households AMFI and as further described in §9 of this NOFA. All loans to assisted homebuyers/homeowners must be evidenced by loan documents provided by the Department and must be payable to the Department.

c) If at any time prior to the full loan period there occurs a resale of the property, a refinance of any superior lien, a repayment of any superior lien, or if the unit ceases to be the assisted Household's principal residence, the remaining loan balance shall become due and payable.

d) Forgiveness of the loan balance is calculated based on a pro-rata annual share of the loan term. The anniversary date of the loan shall constitute completion of the year. Any partial year shall not be waived. The amount due will be based on the pro-rata share number of years of the remaining loan term.

e) In the event the home is sold (voluntary or involuntary), the assisted Household will pay the loan balance from the shared net proceeds of the sale. The shared net proceeds are the sales price minus superior loan repayment (other than Homeownership SuperNOFA Program funds) and any closing costs. A copy of the HUD closing statement must be provided.

6) Construction Standards and Requirements.

a) Housing that is constructed or rehabilitated with HTF funds must meet all applicable local codes, rehabilitation standards, ordinances, and zoning ordinances at the time of project completion. In the absence of a local code for new construction or rehabilitation, HTF-assisted new construction or rehabilitation must meet, as applicable, the International Residential Code, the HOME Program Texas Minimum

Construction Standards (TMCS) and be in compliance with the basic access standards in new construction, established by §2306.514, Texas Government Code. In addition, housing that is rehabilitated with funds awarded under this NOFA must meet all applicable energy efficiency standards established by §2306.187, Texas Government Code, and energy standards as verified by RESCHECK.

b) At the completion of the assistance, all properties must meet the International Residential Code and local building codes. If a home is reconstructed, the applicant must also ensure compliance with the universal design features in new construction, established by §2306.514, Texas Government Code, required for any applicant utilizing federal or state funds administered by TDHCA in the construction of single family homes.

c) All other HTF-assisted housing (e.g., acquisition) must meet all applicable State and local housing quality standards and code requirements and if there are no such standards or code requirements, the housing must meet the Housing Quality Standards in 24 CFR §982.401. When HTF funds are used for a rehabilitation development, the entire unit must be brought up to the applicable property standards.

d) Housing that is assisted with HTF funds must comply with the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. §§4821 - 4846) and the Residential Lead-Based Paint Hazard Reduction Act of 1992 (42 U.S.C. §§4851 - 4856).

e) Awarded organizations must comply with the requirements of §2156.062, Texas Government Code and the rules promulgated by the Office of the Governor under the Uniform Grant Management Act (Chapter 783, Texas Government Code and 1 TAC Chapter 5) for applicable procurement laws and procedures.

f) Awarded organizations must ensure that the demolition and removal of all dilapidated units on the lot occurs prior to the Household's occupancy of the Newly Constructed or Rehabilitated housing unit.

g) Awarded organizations must ensure and verify that each building construction contractor performing activities in the amount of $10,000 or more under the Contract is registered and maintains good standing with the Texas Residential Construction Commission in accordance with Chapters 401 and 416 of the Texas Property Code.

h) Awarded organizations must ensure and verify that each housing unit being rehabilitated in the amount of $10,000 or more under the Contract is registered with the Texas Residential Construction Commission in accordance with §426.003 of the Texas Property Code.

i) Awarded organizations must provide building construction contractor oversight and ensure builder's risk coverage is provided.

j) Awarded organizations must ensure that the demolition of any housing unit does not occur less than six (6) months prior to the Contract end date.

k) Awarded organizations must ensure a Certificate of Construction Completion must be submitted to the Department upon completion of construction-related activities.

7) Affirmative Marketing Program Requirements.

a) Recipients of Housing Trust Funds must adopt affirmative marketing policies and procedures in furtherance of Texas' commitment to nondiscrimination and equal opportunity in housing Affirmative marketing steps consist of actions to provide information and otherwise attract eligible persons in the housing market area to the available housing without regard to race, color, national origin, sex, religion, familial status or disability.

b) The affirmative marketing requirements and procedures adopted must include:

i) Methods for informing the public, owners, and potential tenants about Federal Fair Housing Laws and the awarded applicant's affirmative marketing policy (e.g., the use of the Equal Housing Opportunity logotype or slogan in press releases and solicitations for owners, and written communication to fair housing and other groups);

ii) Requirements and practices each awarded applicant must adhere to in order to carry out the Department's affirmative marketing procedures and requirements (e.g., use of commercial media, use of community contacts, use of the Equal Housing Opportunity logotype or slogan, and display of fair housing poster);

iii) Procedures to be used by awarded applicants to inform and solicit applications from persons in the housing market area who are not likely to apply for the housing without special outreach (e.g., use of community organizations, places of worship, employment centers, fair housing groups, or housing counseling agencies);

iv) Records that will be kept describing actions taken by the awarded applicants and by owners to affirmatively market units and records to assess the results of these actions; and

v) A description of how the awarded applicants will annually assess the success of affirmative marketing actions and what corrective actions will be taken where affirmative marketing requirements are not met.

8) Conflict of Interest.

a) In the procurement of property and services by recipients of Housing Trust Funds, the conflict of interest provisions in 24 CFR §85.36 and §2306.5545, Texas Government Code apply.

b) No persons who exercise or have exercised any functions or responsibilities with respect to activities assisted with HTF funds or who are in a position to participate in a decision making process or gain inside information with regard to these activities, may obtain a financial interest or benefit from a HTF-assisted activity, or have an interest in any contract, subcontract or agreement with respect thereto, or the proceeds thereunder, either for themselves or those with whom they have family or business ties, during their tenure or for one year thereafter.

c) The conflict of interest provisions apply to any person who is an employee, agent, consultant, officer, or elected official or appointed official of the recipient which is receiving HTF funds.

9) Homebuyer Assistance Program Details.

a) Funds released under this NOFA can be allocated to administer a Homebuyer Assistance (HBA), including downpayment and closing cost assistance to eligible homebuyers for the acquisition of affordable and accessible single family housing. Eligible first-time homebuyers must not have owned a home in the three (3) years prior to the receipt of assistance.

b) Eligible homebuyers may receive loans up to $10,000 for down payment, gap financing and closing costs.

i) If the assisted household has an income that is less than 50% of the area median family income, the assistance will be in the form of a 0% interest ten (10) year deferred, forgivable loan creating a 2nd or 3rd lien.

ii) If the household income is below 30% of the AMFI, the assistance will be in the form of a 0% interest five (5) year deferred, forgivable loan creating a 2nd or 3rd lien.

c) The following first lien purchase loan requirements are imposed for households receiving assistance:

i) No adjustable rate mortgage loans (ARMs) are allowed.

ii) No mortgages with a loan to value equal to or greater than 100% are allowed;

iii) No subprime mortgage loans are allowed;

iv) An origination fee and any other fee associated with the mortgage loan may not exceed 2% of the loan amount; and

v) The income ratio (back-end ratio) may not exceed 45%.

d) The contract term for the HBA Program Activity shall not exceed twenty-four (24) months and performance under the contract will be evaluated according to the following benchmarks:

i) Six (6) months, 25% of funds must be committed;

ii) Twelve (12) months, 50% of funds must be committed, 25% of funds drawn;

iii) Eighteen (18) months, 75% of funds must be committed 50% of funds drawn; and

iv) Twenty (24) months, 100% of funds already committed and 100% of funds drawn.

10) Homebuyer Assistance Threshold Criteria.

The following threshold criteria listed in the subsection are mandatory requirements at the time of application submission unless specifically indicated otherwise and will be included in the written agreement, if awarded funds:

i) Cash Reserve: Each awarded applicant will be required to expend funds according to program guidelines and request funds from the Department for eligible expenses. Every Applicant must evidence the ability to administer the program and commit adequate cash reserves of at least $30,000 to facilitate administration of the program during the Department's disbursement process. Cash reserves are not permanently invested in the project but are used for short term deficits that are paid by program funds. Evidence of this commitment and the amount must be included in the Applicant's resolution and budget.

ii) Resolution: All applications submitted must include an original resolution from the Applicant's direct governing body, authorizing the submission of the Application, commitment and the amount of cash reserves for use during the contract period, naming of a person and the person's title authorized to represent the organization and signature authority to execute a contract. If an Applicant that is a nonprofit organization is requesting a waiver of the grant application fee, they must do so in the resolution, and must state that the nonprofit organization offers expanded services such as child care, nutrition programs, job training assistance, health services, or human services. The resolution must be signed and dated within the six months preceding the application deadline date.

iii) Description of Demand: It will be a threshold requirement to submit a narrative that describes in detail the demand evidenced for the proposed number of units to be assisted in the proposed service area. Source data, calculations and assumptions must be included.

iv) Homebuyer Counseling: It will be a threshold requirement for each applicant to submit the level of homebuyer counseling that will be provided. A minimum of eight (8) hours of homebuyer counseling must be provided. Evidence must include documentation describing the level of homebuyer counseling proposed, including post purchase counseling. Applicant must state who will provide the homebuyer counseling. A copy of the curriculum and a copy of the proposed written agreement for service provider (if the applicant is not providing the service) must also be provided.

11) Housing Rehabilitation Assistance Program Details.

a) Funds released under this NOFA can be allocated to administer a Housing Rehabilitation Assistance (HRA) for eligible homeowners for the rehabilitation of owner-occupied single family housing. The homeowner must own the property and it must be the principal residence of the homeowner.

b) Eligible homebuyers may receive loans up to $30,000 for rehabilitation costs, including barrier removal.

i) If the assisted household has an income that is less than 50% of the area median family income, the assistance will be in the form of a 0% interest 20-year deferred, forgivable loan creating a 1st, 2nd, or 3rd lien.

ii) If the household income is below 30% of the AMFI, the assistance will be in the form of a 0% interest 10-year deferred, forgivable loan creating a 1st, 2nd, or 3rd lien.

c) The contract term for the HRA Program Activity shall not exceed twenty-four (24) months and performance under the contract will be evaluated according to the following benchmarks:

i) Six (6) months, 25% of funds must be committed;

ii) Twelve (12) months, 50% of funds must be committed, 25% of funds drawn;

iii) Eighteen (18) months, 75% of funds must be committed, 50% of funds drawn; and

iv) Twenty (24) months, 100% of funds already committed and 100% of funds drawn.

12) Housing Rehabilitation Assistance Threshold Criteria.

The following threshold criteria listed in the subsection are mandatory requirements at the time of application submission unless specifically indicated otherwise and will be included in the written agreement, if awarded funds:

i) Cash Reserve: Each awarded applicant will be required to expend funds according to program guidelines and request funds from the Department for eligible expenses. Every Applicant must evidence the ability to administer the program and commit adequate cash reserves of at least $30,000 to facilitate administration of the program during the Department's disbursement process. Cash reserves are not permanently invested in the project but are used for short term deficits that are paid by program funds. Evidence of this commitment and the amount must be included in the Applicant's resolution and budget.

ii) Resolution: All applications submitted must include an original resolution from the Applicant's direct governing body, authorizing the submission of the Application, commitment and the amount of cash reserves for use during the contract period, naming of a person and the person's title authorized to represent the organization and signature authority to execute a contract. If an Applicant that is a nonprofit organization is requesting a waiver of the grant application fee, they must do so in the resolution, and must state that the nonprofit organization offers expanded services such as child care, nutrition programs, job training assistance, health services, or human services. The resolution must be signed and dated within the six months preceding the application deadline date.

iii) Description of Demand: It will be a threshold requirement to submit a narrative that describes in detail the demand evidenced for the proposed number of units to be assisted in the proposed service area. Source data, calculations and assumptions must be included.

13) Application Review Process.

a) The application review process is described in 10 TAC §51.12.

b) Each application will be handled on a first-come, first-served basis as further described in this section. Each application will be assigned a "received date" based on the date and time it is physically received by the Department. Then each application will be reviewed on its own merits as applicable. Applications will continue to be prioritized for funding based on their "received date". Applications will be reviewed for applicant and activity eligibility, and threshold criteria as described in this NOFA.

c) All Applicants will be processed through the Department's Application Evaluation System, and will include a previous award and past performance evaluation. Poor past performance may disqualify an Applicant for a funding recommendation or the recommendation may include conditions.

d) Applicants Must Meet or Exceed Threshold Criteria.

i) The Department will ensure review of materials required under the NOFA and Application Guide and will issue a notice of any Administrative Deficiencies within forty-five (45) days of the received date. Applications with Administrative Deficiencies not cured within five (5) business days, will be terminated and must reapply for consideration of funds. Applications that have completed this Phase will be reviewed for recommendation to the Board.

ii) If a submitted Application has an entire Volume of the application missing; has excessive omissions of documentation from the Threshold Criteria or Uniform Application documentation; or is so unclear, disjointed or incomplete that a thorough review cannot reasonably be performed by the Department, as determined by the Department, will be terminated without being processed as an Administrative Deficiency.

e) Because Applications are processed in the order they are received by the Department, it is possible that the Department will expend all available HTF funds before an Application has been completely reviewed. If on the date an Application is received by the Department, no funds are available under this NOFA, the Applicant will be notified that no funds exist under the NOFA and the Application will not be processed.

f) The Department may decline to consider any Application if the proposed activities do not, in the Department's sole determination, represent a prudent use of the Department's funds. The Department is not obligated to proceed with any action pertaining to any Applications that are received, and may decide it is in the Department's best interest to refrain from pursuing any selection process. The Department reserves the right to negotiate individual elements of any Application.

g) Funding recommendations of eligible Applicants will be presented to the Department's Governing Board of Directors based on eligibility and limited by the total amount of funds available under this NOFA and the maximum award amount.

14) Appeals and Dispute Resolutions.

a) It is the Department's policy to encourage the use of appropriate alternative dispute resolution procedures ("ADR") under the Governmental Dispute Resolution Act, Chapter 2009 of the Texas Government Code, to assist in resolving disputes under the Department's jurisdiction. As described in Chapter 154 of the Civil Practices and Remedies Code, ADR procedures include mediation. Except as prohibited by the Department's ex parte communications policy, the Department encourages informal communications between Department staff and Applicants, and other interested persons, to exchange information and informally resolve disputes. The Department also has administrative appeals processes to fairly and expeditiously resolve disputes. If at anytime an Applicant or other person would like to engage the Department in an ADR procedure, the person may send a proposal to the Department's Dispute Resolution Coordinator.

b) For additional information on the Department's ADR Policy, see the Department's General Administrative Rule on ADR at 10 TAC, Subchapter A §1.17 and §2306.082, Texas Government Code.

c) An Applicant may appeal decisions made by staff in accordance with 10 TAC, Subchapter A §1.7.

15) Application Submission.

a) All applications submitted under this NOFA must be received on or before 5:00 p.m. on May 1, 2009, regardless of method of delivery.

b) The Department will accept applications from 8 a.m. to 5 p.m. each business day, excluding federal and state holidays from the date this NOFA is published on the Department's web site until the deadline. Question regarding this NOFA should be addressed to:

Texas Department of Housing and Community Affairs

Attn: Housing Trust Fund Program Administrator

HOME and Housing Trust Fund Programs Division

221 East 11th Street

Austin, Texas 78701

Telephone: (512) 463-8921

E-mail: HTF@tdhca.state.tx.us

c) All applications must be submitted, and provide all documentation, as described in this NOFA and associated application materials.

d) Applicants must submit one complete printed copy of all Application materials and one complete scanned copy of the Application materials provided on compact disc (CD-ROM or DVD-ROM).

e) All Application materials including manuals, NOFA, program guidelines, and all applicable HTF rules, will be available on the Department's website at www.tdhca.state.tx.us. Applications will be required to adhere to the Housing Trust Fund Program Rule and threshold requirements in effect at the time of the Application submission. Applications must be on forms provided by the Department, and cannot be altered or modified and must be in final form before submitting them to the Department.

f) Applicants are required to remit a non-refundable Application fee payable to the Texas Department of Housing and Community Affairs in the amount of $30 per Application. Payment must be in the form of a check, cashier's check or money order. Do not send cash. Section 2306.147(b) of the Texas Government Code requires the Department to waive Application fees for nonprofit organizations that offer expanded services such as child care, nutrition programs, job training assistance, health services, or human services. These organizations must include proof of their exempt status and a description of their supportive services in lieu of the Application fee. The Application fee is not an allowable or reimbursable cost under the Homeownership SuperNOFA Program.

g) Application Workshop: the Department will present application workshops in locations throughout the State which will provide an overview of the Homeownership SuperNOFA Program Activities eligible under this NOFA and will also provide Application preparation and submission requirements, evaluation criteria, and state and federal program information. The Application workshop schedule and registration will be posted on the Department's website at www.tdhca.state.tx.us.

h) Audit Requirements: An applicant is not eligible to apply for funds or any other assistance from the Department unless a past audit or Audit Certification Form has been submitted to the Department in a satisfactory format on or before the application deadline for funds or other

assistance per 10 TAC §1.3(b). This is a threshold requirement outlined in the application, therefore applications that have outstanding past audits will be disqualified. Staff will not recommend applications for funding to the Department's Governing Board unless all unresolved audit findings, questions or disallowed costs are resolved per 10 TAC §1.3(c).

i) Applications must be sent via overnight delivery to:

Texas Department of Housing and Community Affairs

HOME and Housing Trust Fund Programs Division

Attn: Housing Trust Fund Program Administrator

221 East 11th Street

Austin, Texas 78701-2410

or via the U.S. Postal Service to:

Texas Department of Housing and Community Affairs

HOME and Housing Trust Fund Programs Division

Attn: Housing Trust Fund, Program Administrator

Post Office Box 13941

Austin, Texas 78711-3941

NOTE: This NOFA does not include the text of the various applicable regulatory provisions that may be important to the particular Housing Trust Fund Program. For proper completion of the application, the Department strongly encourages potential applicants to review all applicable regulations.

TRD-200806608
Michael Gerber
Executive Director
Texas Department of Housing and Community Affairs
Filed: December 19, 2008

♦ ♦ ♦

Housing Trust Fund 2009 Texas Veterans Housing Support Program Notice of Funding Availability (NOFA)

1) Summary.

a) The Texas Department of Housing and Community Affairs ("the Department") announces the availability of $1,000,000 in funding from the Housing Trust Fund (HTF) 2009 appropriation to fund housing assistance programs for veterans. Funds will be made available for Veteran Homebuyer Assistance (VHA), Veteran Homebuyer Assistance with Rehabilitation (VHAR), and Veteran Rental Assistance (VRA).

b) The availability and use of these funds is subject to the Department's Housing Trust Fund Rule at 10 TAC Chapter 51 ("HTF Program Rule") and Chapter 2306, Texas Government Code in effect at the time an application is submitted. Other regulations may also apply such as, but not limited to, 24 CFR §84.36 and §2306.5545, Texas Government Code, for conflict of interest, 24 CFR §5.609 for income qualification, 24 CFR Part 5, subpart A for fair housing, and Chapter 2156, Texas Government Code and the Uniform Grant Management Act (Chapter 783, Texas Government Code and 1 TAC Chapter 5) for procurement. Applicants are encouraged to familiarize themselves with all of the applicable rules that govern the program.

c) Veteran-A veteran is a Person who:

i) Served no fewer than ninety (90) continuous days on active duty (including active duty for training) in the Army, Navy, Air Force, Marines, Coast Guard or United States Public Health Service (unless discharged sooner by reason of a service-connected disability), or a reserve component of one of the listed branches of service, or have enlisted or received an appointment in the Texas National Guard after completing all initial active duty training requirements as a condition of enlistment or appointment, or have completed twenty (20) years in a reserve component so as to be eligible for retirement as a condition of enlistment or appointment, or, if currently an active duty member of a listed service or a full-time reservist, have completed the initial service obligation;

ii) Served after Sept. 16, 1940 (for Texas veterans who entered the armed services before Jan. 1, 1977, and who have been discharged from active duty less than 30 years); and/or

iii) Been honorably discharged.

2) Appropriation of Housing Trust Funds.

a) Funds are made available through the Housing Trust Fund and are not subject to the Regional Allocation Formula. All funds released under this NOFA shall be used for the creation of affordable housing for Texas veterans earning 80% or less of the Area Median Family Income (AMFI) as defined by the U.S. Department of Housing and Urban Development (HUD). Priority will be given to veterans with disabilities.

b) This NOFA will be an Open Application Cycle and funding will be available on a first-come, first-served statewide basis. Applications will be accepted by the Department on regular business days until 5:00 p.m., Friday, May 1, 2009, regardless of method of delivery. Applicants are encouraged to review the application process cited in 10 TAC §51.8 and §51.12 and as described herein. Applications that do not meet minimum threshold criteria will not be considered for funding.

3) Limitation on Funds.

a) The Department awards Veterans Housing Support Program funds to eligible organizations. The maximum award amount may not exceed $250,000, including project, administrative, and soft costs, per Program Activity.

b) Applicants may be eligible to receive up to 4% of project costs for funding for Administrative Costs. Administrative Costs may include:

i) Application intake and processing;

ii) Affirmative marketing and brochures;

iii) Travel costs for administration and contract training;

iv) Professional Services;

v) Construction and disbursement documentation preparation;

vi) Information services;

vii) Procurement of Contractor;

viii) Project document preparation;

ix) Schedule of values; and

x) Work write-up summary.

c) Soft costs are limited to 10% of project costs. Soft Costs may include:

i) Application intake and processing;

ii) Inspections;

iii) Procurement of Contractor;

iv) Schedule of values; and

v) Work write-up summary.

4) Activity and Applicant Eligibility.

a) Eligible and Prohibited Activities are specified in the Department's Housing Trust Fund Rule. Eligible Activities will include those permissible in 10 TAC §51.6. Prohibited Activities include those in 10 TAC §51.7.

b) Eligible Applicants are Units of General Local Government, Nonprofit Organizations, and Public Housing Agencies Authorities (PHA's). Applicants may be ineligible for funding if they meet any of the criteria listed in 10 TAC §51.8(d).

c) Applicants are encouraged to familiarize themselves with the Department's certification and debarment policies prior to application submission.

5) Affordability Requirements.

a) All Housing Trust Fund-assisted housing must follow the income qualification guidelines in 24 CFR §5.609 for VHA, VRA and VHAR and adjusted income guidelines in 24 CFR §5.611 for VRA.

b) Awarded organizations will provide the VHA and VHAR assistance to the homebuyer in the form of a loan. Each loan will be in the form of a 0% interest, 10-year deferred forgivable loan with a term based on the Households AMFI and as further described in §9 of this NOFA. All loans to assisted homebuyers must be evidenced by loan documents provided by the Department and must be payable to the Department.

c) If at any time prior to the full loan period there occurs a resale of the property, a refinance of any superior lien, a repayment of any superior lien, or if the unit ceases to be the assisted Household's principal residence, the remaining loan balance shall become due and payable.

d) Forgiveness of the loan balance is calculated based on a pro-rata annual share of the loan term. The anniversary date of the loan shall constitute completion of the year. Any partial year shall not be waived. The amount due will be based on the pro-rata share number of years of the remaining loan term.

e) In the event the home is sold (voluntary or involuntary), the assisted Household will pay the loan balance from the shared net proceeds of the sale. The shared net proceeds are the sales price minus superior loan repayment (other than Veterans Housing Support Program funds) and any closing costs. A copy of the HUD closing statement must be provided.

6) Construction Standards and Requirements.

a) Housing that is constructed or rehabilitated with HTF funds must meet all applicable local codes, rehabilitation standards, ordinances, and zoning ordinances at the time of project completion. In the absence of a local code for new construction or rehabilitation, HTF-assisted new construction or rehabilitation must meet, as applicable, the International Residential Code, the HOME Program Texas Minimum Construction Standards (TMCS) and be in compliance with the basic access standards in new construction, established by §2306.514, Texas Government Code. In addition, housing that is rehabilitated with funds awarded under this NOFA must meet all applicable energy efficiency standards established by §2306.187, Texas Government Code, and energy standards as verified by RESCHECK.

b) At the completion of the assistance, all properties must meet the International Residential Code and local building codes. If a home is reconstructed, the applicant must also ensure compliance with the universal design features in new construction, established by §2306.514, Texas Government Code, required for any applicant utilizing federal or state funds administered by TDHCA in the construction of single family homes.

c) All other HTF-assisted housing (e.g., acquisition) must meet all applicable State and local housing quality standards and code requirements and if there are no such standards or code requirements, the housing must meet the Housing Quality Standards in 24 CFR §982.401. When HTF funds are used for a rehabilitation development, the entire unit must be brought up to the applicable property standards.

d) Housing that is assisted with HTF funds must comply with the Lead-Based Paint Poisoning Prevention Act (42 USC §§4821 - 4846) and the Residential Lead-Based Paint Hazard Reduction Act of 1992 (42 USC §§4851 - 4856).

e) Awarded organizations must comply with the requirements of §2156.062,Texas Government Code and the rules promulgated by the Office of the Governor under the Uniform Grant Management Act, Chapter 783, Texas Government Code and 1 TAC Chapter 5) for applicable procurement laws and procedures.

f) Rental units secured through VRA must be inspected prior to occupancy and must comply with the Housing Quality Standards in 24 CFR §982.401.

g) Awarded organizations must ensure that the demolition and removal of all dilapidated units on the lot occurs prior to the Household's occupancy of the Newly Constructed or Rehabilitated housing unit.

h) Awarded organizations must ensure and verify that each building construction contractor performing activities in the amount of $10,000 or more under the Contract is registered and maintains good standing with the Texas Residential Construction Commission in accordance with Chapters 401 and 416 of the Texas Property Code.

i) Awarded organizations must ensure and verify that each housing unit being rehabilitated in the amount of $10,000 or more under the Contract is registered with the Texas Residential Construction Commission in accordance with §426.003 of the Texas Property Code.

j) Awarded organizations must provide building construction contractor oversight and ensure builder's risk coverage is provided.

k) Awarded organizations must ensure that the demolition of any housing unit does not occur less than six (6) months prior to the Contract end date.

l) Awarded organizations must ensure a Certificate of Construction Completion must be submitted to the Department upon completion of construction-related activities.

7) Affirmative Marketing Program Requirements.

a) Recipients of Housing Trust Funds must adopt affirmative marketing policies and procedures in furtherance of Texas' commitment to nondiscrimination and equal opportunity in housing Affirmative marketing steps consist of actions to provide information and otherwise attract eligible persons in the housing market area to the available housing without regard to race, color, national origin, sex, religion, familial status or disability.

b) The affirmative marketing requirements and procedures adopted must include:

i) Methods for informing the public, owners, and potential tenants about Federal Fair Housing Laws and the awarded applicant's affirmative marketing policy (e.g., the use of the Equal Housing Opportunity logotype or slogan in press releases and solicitations for owners, and written communication to fair housing and other groups);

ii) Requirements and practices each awarded applicants must adhere to in order to carry out the Department's affirmative marketing procedures and requirements (e.g., use of commercial media, use of community contacts, use of the Equal Housing Opportunity logotype or slogan, and display of fair housing poster);

iii) Procedures to be used by awarded applicants to inform and solicit applications from persons in the housing market area who are not likely to apply for the housing without special outreach (e.g., use of community organizations, places of worship, employment centers, fair housing groups, or housing counseling agencies);

iv) Records that will be kept describing actions taken by the awarded applicants and by owners to affirmatively market units and records to assess the results of these actions; and,

v) A description of how the awarded applicants will annually assess the success of affirmative marketing actions and what corrective actions will be taken where affirmative marketing requirements are not met.

8) Conflict of Interest.

a) In the procurement of property and services by recipients of Housing Trust Funds, the conflict of interest provisions in 24 CFR §85.36 and §2306.5545, Texas Government Code, apply.

b) No persons who exercise or have exercised any functions or responsibilities with respect to activities assisted with HTF funds or who are in a position to participate in a decision making process or gain inside information with regard to these activities, may obtain a financial interest or benefit from a HTF-assisted activity, or have an interest in any contract, subcontract or agreement with respect thereto, or the proceeds hereunder, either for themselves or those with whom they have family or business ties, during their tenure or for one year thereafter.

c) The conflict of interest provisions apply to any person who is an employee, agent, consultant, officer, or elected official or appointed official of the recipient which is receiving HTF funds.

9) Veterans Homebuyer Assistance (VHA) and Homebuyer Assistance with Rehabilitation (VHAR) Program Details.

a) Funds released under this NOFA can be allocated to administer a Veterans Homebuyer Assistance Program (VHA) and Veterans Housing Assistance with Rehabilitation (VHAR), including downpayment and closing cost assistance to eligible veteran homebuyers for the acquisition, or acquisition and rehabilitation, of affordable and accessible single family housing. Eligible veteran homebuyers must not have owned a home in the three (3) years prior to the receipt of assistance.

b) Eligible veteran homebuyers may receive loans up to $35,000 for down payment, closing costs and rehabilitation. A maximum of $15,000 of the $35,000 loan can be used for down payment and closing costs. The balance of the assistance can be used for needed accessibility modifications.

i) If the assisted household has an income that is less than 60% of the area median family income or if the head or co-head of the household is an income-qualified up to 80% AMFI disabled veteran, the assistance will be in the form of a 0% interest five (5) year deferred, forgivable loan creating a 2nd or 3rd lien.

ii) If the household income is below 80% of the AMFI, but more than 60% of the AMFI, then the homebuyer assistance will be in the form of a 0% interest ten (10) year deferred, forgivable loan creating a 2nd or 3rd lien.

c) The following first lien purchase loan requirements are imposed for households receiving Veteran Homebuyer Assistance:

i) No adjustable rate mortgage loans (ARMs) are allowed.

ii) No mortgages with a loan to value equal to or greater than 100% are allowed;

iii) No subprime mortgage loans are allowed;

iv) An origination fee and any other fee associated with the mortgage loan may not exceed 2% of the loan amount; and

v) The income ratio (back-end ratio) may not exceed 45%.

d) The contract term for the VHA and VHAR Program Activity shall not exceed twenty-four (24) months and performance under the contract will be evaluated according to the following benchmarks:

i) Six (6) months, 25% of funds must be committed;

ii) Twelve (12) months, 50% of funds must be committed, 25% of funds drawn;

iii) Eighteen (18) months, 75% of funds must be committed, 50% of funds drawn; and

iv) Twenty (24) months, 100% of funds must be committed and 100% of funds drawn.

10) VHA and VHAR Threshold Criteria.

The following threshold criteria listed in the subsection are mandatory requirements at the time of application submission unless specifically indicated otherwise and will be included in the written agreement, if awarded funds:

i) Cash Reserve: Each awarded applicant will be required to expend funds according to program guidelines and request funds from the Department for eligible expenses. Every Applicant must evidence the ability to administer the program and commit adequate cash reserves of at least $35,000 to facilitate administration of the program during the Department's disbursement process. Cash reserves are not permanently invested in the project but are used for short-term deficits that are paid by program funds. Evidence of this commitment and the amount must be included in the Applicant's resolution and budget.

ii) Resolution: All applications submitted must include an original resolution from the Applicant's direct governing body, authorizing the submission of the Application, commitment and the amount of cash reserves for use during the contract period, naming of a person and the person's title authorized to represent the organization and signature authority to execute a contract. If an Applicant that is a nonprofit organization is requesting a waiver of the grant application fee, they must do so in the resolution, and must state that the nonprofit organization offers expanded services such as childcare, nutrition programs, job training assistance, health services, or human services. The resolution must be signed and dated within the six months preceding the application deadline date.

iii) Description of Demand: It will be a threshold requirement to submit a narrative that describes in detail the demand evidenced for the proposed number of units to be assisted in the proposed service area. Source data, calculations and assumptions must be included.

iv) Homebuyer Counseling: It will be a threshold requirement for each applicant to submit the level of homebuyer counseling that will be provided. A minimum of eight (8) hours of homebuyer counseling must be provided. Evidence must include documentation describing the level of homebuyer counseling proposed, including post purchase counseling. Applicant must state who will provide the homebuyer counseling. A copy of the curriculum and a copy of the proposed written agreement for service provider (if the applicant is not providing the service) must also be provided.

11) Veterans Rental Assistance (VRA) Program Details.

a) Funds released under this NOFA can be allocated toward the Veterans Rental Assistance Program to provide eligible households rental subsidies, including security and utility deposits to tenants earning 80% or less of the Area Median Family Income (AMFI) as defined by HUD.

b) The contract term for VRA shall not exceed forty (40) months; however, individual household assistance is limited to thirty-six (36) months.

c) The Household must comply with the following initial eligibility requirements: participate in an approved self-sufficiency program; maintain principal residency in the rental unit for which the subsidy is being provided; be an income eligible household; reside in a rental unit that is located within the Administrator's Service Area; and meet all other eligibility requirements.

d) Through the VRA program, rental subsidy and security and utility deposit assistance is provided to tenants as a grant, in accordance with written tenant selection policies, for a period not to exceed thirty-six (36) months, which shall include among its objectives the securing of a permanent source of affordable housing on or before the expiration of the rental subsidy. Security deposits and utility deposits may be provided in conjunction with rental assistance. A security deposit cannot exceed two (2) months rent for the unit.

e) The rental standard must not exceed HUD's "Fair Market Rent for the Housing Choice Voucher Program." Rental units must be inspected prior to occupancy and annually by a qualified HQS inspector, and must comply with Housing Quality Standards established by HUD in 24 CFR §982.401.

f) The contract term for the VRA Program shall not exceed forty (40) months and performance under the contract will be evaluated according to the following benchmarks:

i) Six (6) months, application intake complete for 30% for Households to be assisted;

ii) Twelve (12) months, application intake complete for 75% for Households to be assisted;

iii) Eighteen (18) months, 100% of funds must be committed to Households to be assisted and 25% of funds drawn;

iv) Twenty-four (24) months, 100% of funds already committed and 35% of funds drawn;

v) Thirty-six (36) months, 100% of funds already committed and 50% of funds drawn; and

vi) Forty (40) months, 100% of funds already committed and 100% of funds drawn.

12) Veterans Rental Assistance (VRA) Threshold Criteria.

The following threshold criteria listed in the subsection are mandatory requirements at the time of application submission unless specifically indicated otherwise and will be included in the written agreement, if awarded funds:

i) Cash Reserve: Each awarded applicant will be required to expend funds according to program guidelines and request funds from the Department for eligible expenses. Every Applicant must evidence the ability to administer the program and commit adequate cash reserves of at least one month of rent for the number of households proposed to serve as stated in the application to facilitate administration of the program during the Department's disbursement process. Cash reserves are not permanently invested in the project but are used for short term deficits that are reimbursed by program funds. Evidence of this commitment and the amount must be included in the Applicant's resolution and budget.

ii) Resolution: All applications submitted must include an original resolution from the Applicant's direct governing body, authorizing the submission of the Application, commitment and amount of cash reserves for use during the contract period, , naming of a person and the person's title authorized to represent the organization and signature authority to execute a contract. If an Applicant that is a nonprofit organization is requesting a waiver of the grant application fee, they must do so in the resolution, and must state that the nonprofit organization offers expanded services such as child care, nutrition programs, job training assistance, health services, or human services. The resolution must be signed and dated within the six months preceding the application deadline date.

iii) Description of Demand: It will be a threshold requirement to submit a narrative that describes in detail the demand evidenced for the proposed number of units to be assisted in the proposed service area. Source data, calculations and assumptions must be included.

iv) VRA Self Sufficiency Program: It will be a threshold requirement for each Applicant to submit a proposed detailed Self Sufficiency Plan and must describe the process for the transition of households to permanent housing by the end of the thirty-six (36) month rental assistance contract term. The documentation must describe the necessary components for the overall plan proposed for transition of potential tenants. This plan, like a case management plan, should detail the need of the tenant, how these needs will be addressed including any agreements with service providers who shall assist the tenant at meeting these needs, and a proposed timeframe for completing those activities. The plan must include:

(A) A sample household budget which will utilize existing sources of income such as employment, disability payments and other types of support that details how the assisted household will afford to be self-sufficient by the end of the thirty (30) month rental assistance.

(B) If additional income is required to attain self-sufficiency, a plan for attaining the required education or training, or a job search plan must be included.

(C) Specific housing goals that will be completed on or before the end of the thirty-six (36) month assistance period include: finding permanently subsidized housing, affordable market housing or other permanent housing solutions. The plan should include the required steps such as completing an application, approximate waiting time to get into the type of housing desired and the cost of the housing to the tenant.

13) Application Review Process.

a) The application review process is described in 10 TAC §51.12.

b) Each application will be handled on a first-come, first-served basis as further described in this section. Each application will be assigned a "received date" based on the date and time it is physically received by the Department. Then each application will be reviewed on its own merits as applicable. Applications will continue to be prioritized for funding based on their "received date". Applications will be reviewed for applicant and activity eligibility, and threshold criteria as described in this NOFA.

c) All Applicants will be processed through the Department's Application Evaluation System, and will include a previous award and past performance evaluation. Poor past performance may disqualify an Applicant for a funding recommendation or the recommendation may include conditions.

d) Applicants Must Meet or Exceed Threshold Criteria.

i) The Department will ensure review of materials required under the NOFA and Application Guide and will issue a notice of any Administrative Deficiencies within 45 days of the received date. Applications with Administrative Deficiencies not cured within five (5) business days, will be terminated and must reapply for consideration of funds. Applications that have completed this Phase will be reviewed for recommendation to the Board.

ii) If a submitted Application has an entire Volume of the application missing; has excessive omissions of documentation from the Threshold Criteria or Uniform Application documentation; or is so unclear, disjointed or incomplete that a thorough review cannot reasonably be performed by the Department, as determined by the Department, will be terminated without being processed as an Administrative Deficiency.

e) Because Applications are processed in the order they are received by the Department, it is possible that the Department will expend all available HTF funds before an Application has been completely reviewed. If on the date an Application is received by the Department, no funds are available under this NOFA, the Applicant will be notified that no funds exist under the NOFA and the Application will not be processed.

f) The Department may decline to consider any Application if the proposed activities do not, in the Department's sole determination, represent a prudent use of the Department's funds. The Department is not obligated to proceed with any action pertaining to any Applications that are received, and may decide it is in the Department's best interest to refrain from pursuing any selection process. The Department reserves the right to negotiate individual elements of any Application.

g) Funding recommendations of eligible Applicants will be presented to the Department's Governing Board of Directors based on eligibility and limited by the total amount of funds available under this NOFA and the maximum award amount.

14) Appeals and Dispute Resolutions.

a) It is the Department's policy to encourage the use of appropriate alternative dispute resolution procedures ("ADR") under the Governmental Dispute Resolution Act, Chapter 2009, Texas Government Code, to assist in resolving disputes under the Department's jurisdiction. As described in Chapter 154, Civil Practices and Remedies Code, ADR procedures include mediation. Except as prohibited by the Department's ex parte communications policy, the Department encourages informal communications between Department staff and Applicants, and other interested persons, to exchange information and informally resolve disputes. The Department also has administrative appeals processes to fairly and expeditiously resolve disputes. If at anytime an Applicant or other person would like to engage the Department in an ADR procedure, the person may send a proposal to the Department's Dispute Resolution Coordinator.

b) For additional information on the Department's ADR Policy, see the Department's General Administrative Rule on ADR at 10 TAC, Subchapter A §1.17 and §2306.082, Texas Government Code.

c) An Applicant may appeal decisions made by staff in accordance with 10 TAC, Subchapter A §1.7.

15) Application Submission.

a) All applications submitted under this NOFA must be received on or before 5:00 p.m. on Friday, May 1, 2009, regardless of method of delivery.

b) The Department will accept applications from 8 a.m. to 5 p.m. each business day, excluding federal and state holidays from the date this NOFA is published on the Department's web site until the deadline. Question regarding this NOFA should be addressed to:

Texas Department of Housing and Community Affairs

Attn: Housing Trust Fund Program Administrator

HOME and Housing Trust Fund Programs Division

221 East 11th Street

Austin, Texas 78701

Telephone: (512) 463-8921

E-mail: HTF@tdhca.state.tx.us

c) All applications must be submitted, and provide all documentation, as described in this NOFA and associated application materials.

d) Applicants must submit one complete printed copy of all Application materials and one complete scanned copy of the Application materials provided on compact disc (CD-ROM or DVD-ROM).

e) All Application materials including manuals, NOFA, program guidelines, and all applicable HTF rules, will be available on the Department's website at www.tdhca.state.tx.us. Applications will be required to adhere to the Housing Trust Fund Program Rule and threshold requirements in effect at the time of the Application submission. Applications must be on forms provided by the Department, and cannot be altered or modified and must be in final form before submitting them to the Department.

f) Applicants are required to remit a non-refundable Application fee payable to the Texas Department of Housing and Community Affairs in the amount of $30 per Application. Payment must be in the form of a check, cashier's check or money order. Do not send cash. Section §2306.147(b), Texas Government Code requires the Department to waive Application fees for nonprofit organizations that offer expanded services such as child care, nutrition programs, job training assistance, health services, or human services. These organizations must include proof of their exempt status and a description of their supportive services in lieu of the Application fee. The Application fee is not an allowable or reimbursable cost under the Veterans Housing Support Program.

g) Application Workshop: the Department will present application workshops in locations throughout the State which will provide an overview of the Veterans Housing Support Program Activities eligible under this NOFA and will also provide Application preparation and submission requirements, evaluation criteria, and state and federal program information. The Application workshop schedule and registration will be posted on the Department's website at www.tdhca.state.tx.us.

h) Audit Requirements: An applicant is not eligible to apply for funds or any other assistance from the Department unless a past audit or Audit Certification Form has been submitted to the Department in a satisfactory format on or before the application deadline for funds or other assistance per 10 TAC §1.3(b). This is a threshold requirement outlined in the application, therefore applications that have outstanding past audits will be disqualified. Staff will not recommend applications for funding to the Department's Governing Board unless all unresolved audit findings, questions or disallowed costs are resolved per 10 TAC §1.3(c).

i) Applications must be sent via overnight delivery to:

Texas Department of Housing and Community Affairs

HOME and Housing Trust Fund Programs Division

Attn: Housing Trust Fund Program Administrator

221 East 11th Street

Austin, Texas 78701-2410

or via the U.S. Postal Service to:

Texas Department of Housing and Community Affairs

HOME and Housing Trust Fund Programs Division

Attn: Housing Trust Fund, Program Administrator

Post Office Box 13941

Austin, Texas 78711-3941

NOTE: This NOFA does not include the text of the various applicable regulatory provisions that may be important to the particular Housing Trust Fund Program. For proper completion of the application, the Department strongly encourages potential applicants to review all applicable regulations.

TRD-200806607
Michael Gerber
Executive Director
Texas Department of Housing and Community Affairs
Filed: December 19, 2008

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Texas Department of Insurance

Third Party Administrator Applications

The following third party administrator (TPA) applications have been filed with the Texas Department of Insurance and are under consideration.

Application of COMPUTER SCIENCES CORPORATION INDIA PRIVATE LIMITED, a foreign third party administrator. The home office is NOIDA, INDIA.

Application of HALLMARK MANAGEMENT, LLC (using the assumed name HALLMARK MANAGEMENT WORKERS COMPENSATION SERVICES, LLC), a foreign third party administrator. The home office is OKLAHOMA CITY, OKLAHOMA.

Any objections must be filed within 20 days after this notice is published in the *Texas Register*, addressed to the attention of David Moskowitz, MC 305-2E, 333 Guadalupe, Austin, Texas 78701.

TRD-200806634
Gene C. Jarmon
Chief Clerk and General Counsel
Texas Department of Insurance
Filed: December 19, 2008

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Texas Public Finance Authority

Notice of Award

Pursuant to Texas Government Code, Chapter 2254, the Texas Public Finance Authority announces this notice of the award of a consulting contract with respect to Request for Proposal No. 2008-347-002 for executive search services. The Board of Directors of the Authority awarded the contract to Dorothy Drummer & Associates, 1801 Lavaca Street, Suite 115-A, Austin, Texas 78701. The amount of the contract is $35,000 plus reimbursement of approved expenses.

The notice of the Request for Proposal was published in the November 28, 2008, issue of the *Texas Register* (33 TexReg 9816).

TRD-200806625
Judith Porras
Interim Executive Director and General Counsel
Texas Public Finance Authority
Filed: December 19, 2008

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Public Utility Commission of Texas

Notice of Award of a Major Consulting Contract

The Public Utility Commission of Texas (PUCT) announces the award of contract #473-09-00155 to Quanta Technology, an entity with a principal place of business at 4020 Westchase Boulevard, Suite 300, Raleigh, North Carolina 27607. The Contractor will undertake, but is not limited to, the following tasks:

1. Review and evaluate data collected by the PUC from electric and telecommunications utilities related to hurricanes and tropical storms impacting the Texas coast within the last ten years to assess infrastructure damage caused by wind, trees/flying debris, inland flooding, and storm surge and the associated restoration costs.

2. Evaluate the cost to electric utilities of the following programs throughout the State of Texas:

a. implementation of vegetation management programs that require annual inspection of overhead facilities as compared to regularly scheduled vegetation management required under current standards set by the North American Electric Reliability Corporation (NERC) and the Electric Reliability Council of Texas (ERCOT).

b. implementation of an annual ground-based inspection program for overhead facilities, including poles and other support structures, as compared to the regularly scheduled inspections of utility poles and overhead equipment currently used.

3. Evaluate the costs and benefits of implementing the following requirements in hurricane-prone areas (within 50 miles of the Texas coast):

a. construction of new electric substations and telecommunications central offices above the 100-year floodplain

b. providing adequate back-up power for central offices and substations

c. construction of new transmission lines and/or replacement of existing structures designed to meet NESC wind loading standards in effect on December 1, 2008

d. deployment of particular types of transmission structures, specifically wood, concrete, and steel for new construction or expansion of existing lines

e. building underground transmission and distribution lines, including new construction, expansion of existing lines, or rebuilds

4. Evaluate the impact that changes in technology such as the use of advanced meters and the implementation of the Smart Grid would have on the reliability of the provision of electric service following a hurricane.

The benefits and costs for each of the individual programs and requirements listed above shall be determined on both a total amounts statewide and per customer basis. The analysis shall not be restricted to an examination of costs and benefits experienced by the electric and telecommunications utilities but will also include the benefits to individuals and businesses associated with decreases in restoration times in conjunction with the implementation of the recommendations, including factors such as lost wages and loss of business productivity that occur during power outages. The evaluation shall take into account that some homes and businesses will not benefit from the shorter restoration times, because significant structural damages may prevent them from safely receiving power.

The Contractor's report will include recommendations identifying the programs (separately or in combination) that will provide the maximum benefit per cost expended on both a state-wide and regional (Gulf Coast) basis.

The total value of the contract is $190,000. The contract was executed on December 22, 2008 and will expire on February 27, 2009, unless

extended by the PUCT. The Contractor must complete and submit all reports under the contract to the PUCT by February 27, 2009.

TRD-200806600
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: December 18, 2008

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Texas Department of Transportation

Public Notice - Aviation

Pursuant to Transportation Code, §21.111, and Title 43, Texas Administrative Code, §30.209, the Texas Department of Transportation conducts public hearings to receive comments from interested parties concerning proposed approval of various aviation projects.

For information regarding actions and times for aviation public hearings, please go to the following web site:

www.txdot.gov/about_us/public_hearings_and_meetings/aviation.htm

Or visit **www.txdot.gov,** click on Citizen, click on Public Hearings, and then click on Aviation.

Or contact Texas Department of Transportation, Aviation Division, 150 East Riverside, Austin, Texas 78704, (512) 416-4501 or 1-800-68-PILOT.

TRD-200806617
Joanne Wright
Deputy General Counsel
Texas Department of Transportation
Filed: December 19, 2008

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Public Notice - Creation of Specialty License Plates

Under Title 43, Texas Administrative Code, §17.28(i)(1)(D), the Texas Department of Transportation is required to publish notice of all tentatively approved specialty license plates for public comment. The department will accept comments on these specialty license plates until 5:00 p.m. on Monday, January 12, 2009.

The specialty license plate tentatively approved and open for comment is: Marine Engineers Beneficial Association (MEBA). This plate will be available to the general public and will not have qualifying restrictions. The license plate image may be viewed at:

www.txdot.gov,

keyword: plate vote. All comments will be considered prior to the final decision.

Please e-mail comments to tbelk@dot.state.tx.us or write to Tammy Belk, Texas Department of Transportation, Vehicle Titles and Registration Division, 4000 Jackson Avenue, Austin, Texas 78779-0001. For more information go to www.txdot.gov.

TRD-200806616
Joanne Wright
Deputy General Counsel
Texas Department of Transportation
Filed: December 19, 2008

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Texas Water Development Board

Request for Applications for State Fiscal Year 2009 Agricultural Water Conservation Fund

The Texas Water Development Board (TWDB) solicits Request for Applications (RFAs) for the state fiscal year 2009. The total amount of the grants to be awarded by the TWDB shall not exceed $600,000 from the Agricultural Water Conservation Fund. The rules governing the Agricultural Water Conservation Fund (31 Texas Administrative Code Chapter 367), guidelines, and instructions are available upon request from the TWDB.

Summary of the RFA

Solicitation Date (Opening): January 2, 2009

Due Date (Closing): March 4, 2009 at 12:00 p.m. Central Standard Time

Anticipated Award Date: Approximately May 1, 2009

Estimated Total Funding: $600,000

Eligible applicants: State Agencies and Political Subdivisions

Technical Contact: Aung K. Hla, Team Lead, Agricultural Water Conservation Section

Texas Water Development Board

P.O. Box 13231, Austin, Texas 78711-3231

Phone: (512) 463-7940

E-mail: aung.hla@twdb.state.tx.us

Agricultural Water Conservation Grant Categories:

1. Irrigation water use metering

This category includes the purchase, installation, maintenance and data collection services of irrigation meters, including telemetry accessories. The successful applicants will be required to properly design and install meters in producers' fields, or in irrigation canal systems, that will facilitate the collection of accurate and reliable data. Applicants are required to provide TWDB with annual irrigation water use data (per acre by crop) for each meter installed for a period of five years.

2. Conservation education and public awareness

Applicants must design, develop and deliver agricultural water conservation education in a statewide or on a regional scale. The conservation education projects may be completely new or built upon existing programs that meet the needs of rural communities. The projects may include but are not limited to hands-on outdoor and indoor activities for children, youth and adults, water festival camps, and summer internships programs with groundwater conservation districts and irrigation districts. Applicants are encouraged to seek and build partnerships with other political subdivisions and state agencies for sharing the cost of the projects. The applicants must delineate the expected water conservation outcomes of the project.

3. Innovative technology transfer

The proposed innovative technology transfers must develop and demonstrate processes or methods to enhance the quality and reliability of new agricultural water conservation technologies, best management practices, and may also include emerging technologies for estimating statewide irrigation water use. To be given priority consideration, the tools employed in the project should be transferable to TWDB staff. Applicants are encouraged to build partnerships with local, state, and federal entities for collecting, and sharing data resources. The proposal must clearly delineate the impacts of the project on agricultural water conservation in particular and water resources planning in general.

4. Economic impacts of reduction of irrigation water use

This study is designed to evaluate the socio-economic impacts on local communities and regional economies resulting from proposals to reduce irrigation water use if the reductions are or are not implemented. The scope of work is limited to geographical areas impacted by recognized or projected depletion of aquifers within Texas. To be given consideration, the applicants are encouraged to build partnerships with other institutions that have conducted exemplary research and studies for related projects.

Grant Amount

Up to $600,000 has been initially authorized for fiscal year 2009 assistance for agricultural water conservation grants from the TWDB's Agricultural Water Conservation Fund (Fund). Funds will be awarded through a statewide competitive grants process. TWDB may fund single-and multi-year projects, not to exceed three years. The available funding for the four categories is anticipated to award approximately three to five projects based on previous years' experience. All proposals will be evaluated based upon the specific criteria set forth in this solicitation.

Description of Applicant Criteria

The applicable scope of work, schedule, and contract amount will be negotiated after the TWDB selects the most qualified applicants. Failure to arrive at mutually agreeable terms of a contract with the most qualified applicant shall constitute a rejection of the Board's offer and may result in subsequent negotiations with the next most qualified applicant. The TWDB reserves the right to reject any or all applications if staff determines that the application(s) does not adequately meet the required criteria or if the funding available is less than the requested funding.

Deadline for Submission of Applications

Six double-sided, double-spaced copies of a completed application must be filed with the TWDB no later than March 4, 2009 at 12:00 p.m. Central Standard Time. Applications can be directed either in person to David Carter, Texas Water Development Board, Stephen F. Austin Building, Room 531, 1700 North Congress Avenue, Austin, Texas 78701; or by mail to David Carter, Texas Water Development Board, P.O. Box 13231 Capitol Station, Austin, Texas 78711-3231.

TRD-200806570

Kenneth L. Petersen

General Counsel

Texas Water Development Board

Filed: December 18, 2008

How to Use the Texas Register

Information Available: The 14 sections of the ***Texas Register*** represent various facets of state government. Documents contained within them include:

Governor - Appointments, executive orders, and proclamations.

Attorney General - summaries of requests for opinions, opinions, and open records decisions.

Secretary of State - opinions based on the election laws.

Texas Ethics Commission - summaries of requests for opinions and opinions.

Emergency Rules- sections adopted by state agencies on an emergency basis.

Proposed Rules - sections proposed for adoption.

Withdrawn Rules - sections withdrawn by state agencies from consideration for adoption, or automatically withdrawn by the Texas Register six months after the proposal publication date.

Adopted Rules - sections adopted following public comment period.

Texas Department of Insurance Exempt Filings - notices of actions taken by the Texas Department of Insurance pursuant to Chapter 5, Subchapter L of the Insurance Code.

Texas Department of Banking - opinions and exempt rules filed by the Texas Department of Banking.

Tables and Graphics - graphic material from the proposed, emergency and adopted sections.

Transferred Rules- notice that the Legislature has transferred rules within the *Texas Administrative Code* from one state agency to another, or directed the Secretary of State to remove the rules of an abolished agency.

In Addition - miscellaneous information required to be published by statute or provided as a public service.

Review of Agency Rules - notices of state agency rules review.

Specific explanation on the contents of each section can be found on the beginning page of the section. The division also publishes cumulative quarterly and annual indexes to aid in researching material published.

How to Cite: Material published in the ***Texas Register*** is referenced by citing the volume in which the document appears, the words "TexReg" and the beginning page number on which that document was published. For example, a document published on page 2402 of Volume 33 (2008) is cited
as follows: 33 TexReg 2402.

In order that readers may cite material more easily, page numbers are now written as citations. Example: on page 2 in the lower-left hand corner of the page, would be written "33 TexReg 2 issue date," while on the opposite page, page 3, in the lower right-hand corner, would be written "issue date 33 TexReg 3."

How to Research: The public is invited to research rules and information of interest between 8 a.m. and 5 p.m. weekdays at the ***Texas Register*** office, Room 245, James Earl Rudder Building, 1019 Brazos, Austin. Material can be found using ***Texas Register*** indexes, the ***Texas Administrative Code***, section numbers, or TRD number.

Both the ***Texas Register*** and the ***Texas Administrative Code*** are available online through the Internet. The address is: http://www.sos.state.tx.us. The ***Register*** is available in an .html version as well as a .pdf (portable document format) version through the Internet. For website subscription information, call the Texas Register at (512) 463-5561.

Texas Administrative Code

The ***Texas Administrative Code (TAC***) is the compilation of all final state agency rules published in the ***Texas Register***. Following its effective date, a rule is entered into the ***Texas Administrative Code***. Emergency rules, which may be adopted by an agency on an interim basis, are not codified within the ***TAC***.

The ***TAC*** volumes are arranged into Titles and Parts (using Arabic numerals). The Titles are broad subject categories into which the agencies are grouped as a matter of convenience. Each Part represents an individual state agency.

The complete TAC is available through the Secretary of State's website at http://www.sos.state.tx.us/tac. The following companies also provide complete copies of the TAC: Lexis-Nexis (800-356-6548), and West Publishing Company (800-328-9352).

The Titles of the ***TAC***, and their respective Title numbers are:

1. Administration
4. Agriculture
7. Banking and Securities
10. Community Development
13. Cultural Resources
16. Economic Regulation
19. Education
22. Examining Boards
25. Health Services
28. Insurance
30. Environmental Quality
31. Natural Resources and Conservation
34. Public Finance
37. Public Safety and Corrections
40. Social Services and Assistance
43. Transportation

How to Cite: Under the ***TAC*** scheme, each section is designated by a ***TAC*** number. For example in the citation 1 TAC §27.15: 1 indicates the title under which the agency appears in the ***Texas Administrative Code***; ***TAC*** stands for the ***Texas Administrative Code***; §27.15 is the section number of the rule (27 indicates that the section is under Chapter 27 of Title 1; 15 represents the individual section within the chapter).

How to update: To find out if a rule has changed since the publication of the current supplement to the ***Texas Administrative Code***, please look at the ***Table of TAC Titles Affected***. The table is published cumulatively in the blue-cover quarterly indexes to the ***Texas Register***. If a rule has changed during the time period covered by the table, the rule's ***TAC*** number will be printed with one or more ***Texas Register*** page numbers, as shown in the following example.

TITLE 40. SOCIAL SERVICES AND ASSISTANCE
Part I. Texas Department of Human Services
40 TAC §3.704.....950, 1820

The ***Table of TAC Titles Affected*** is cumulative for each volume of the ***Texas Register*** (calendar year).